



# **ASA, CAP and BCAP response to the Government's HFSS advertising consultation**

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## **Annex A**

### **– Outline of the self-regulatory system and the rules controlling HFSS advertising**

## **Introduction**

This annex is intended to provide background detail to support the ASA, CAP and BCAP's response. We would urge government to draw on this document to assist in their evaluation of consultation responses and consideration of any policy outcomes from the consultation process.

It is divided into the following parts:

- A – Self-regulatory system
- B – UK Advertising Codes
- C – HFSS advertising rules for TV
- D – HFSS advertising rules for online media
- E – BCAP enforcement
- F – CAP enforcement

The Annex sets out the wider framework of the self-regulatory system and the UK Advertising Codes protections for children. It includes specific detail on the rules controlling the advertising of food and soft drink products high in fat, salt and sugar (HFSS), how they are applied and their regulatory effectiveness both in terms of levels of compliance and their wider impact on the advertising children are exposed to.

# A – Self-regulatory system

## 1. Advertising Standards Authority

The ASA is the independent body responsible for administering the UK Advertising Codes, authored by the Committees of Advertising Practice, and ensuring that the self-regulatory system works in the public interest.

The ASA receives and investigates complaints from the public and industry. Decisions on investigated complaints are taken by the independent ASA Council and published on the ASA's website. An Independent Review process exists for parties who wish to challenge a ruling when they believe there are substantial flaws in the final decision or process.

If the ASA Council upholds a complaint, the marketing communication must be withdrawn or amended. CAP and BCAP conduct compliance work, pro-active monitoring and research to enforce the ASA Council's decisions. Information about the ASA, including the [complaint-handling](#) and [investigations](#) procedures and the [Independent Review](#) process is available via these links.

## 2. Broadcast Committee of Advertising Practice

BCAP is the regulatory body responsible for maintaining the [UK Code of Broadcast Advertising](#) (the BCAP Code) under agreement with the Office of Communications (Ofcom). Ofcom has a statutory duty, under the Communications Act 2003, to maintain standards in TV and radio advertisements. In 2004, Ofcom entrusted BCAP and the broadcast arm of the ASA with the regulation of broadcast advertisements in recognition of CAP and the ASA's successful regulation of non-broadcast marketing for over 40 years, and in line with better regulation principles.

The BCAP Code regulates all advertisements on television channels and radio stations licensed by Ofcom and all advertisements on Sianel Pedwar Cymru (S4C) and S4C digital, including teleshopping channels and any additional television service (including television text services and interactive television services). The BCAP Code is enforced against Ofcom-licensed broadcasters, Sianel Pedwar Cymru (S4C) and S4C digital. Broadcasters are required by the terms of their Ofcom licence, and, for S4C, by statute, to adhere to the standards set out in the BCAP Code.

BCAP members include broadcasters and trade associations representing advertisers, broadcasters and agencies. BCAP must seek advice on proposed Code changes from an expert consumer panel, the Advertising Advisory Committee (AAC).

The [Communications Act 2003](#) sets out provisions for the regulation of broadcasting and television and radio services, including provisions aimed at securing standards for broadcast advertisements.

Under contract with Ofcom, BCAP and the ASA undertake to satisfy [section 319](#) of the Communications Act 2003, which requires, among other things, “(h) that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented”. In addition, section 322 empowers Ofcom to require TV broadcasters to exclude advertisements “from a specified part of a licensed service”, and [section 335](#) states that the regulatory regime for TV will include “the conditions that OFCOM consider appropriate for securing that the relevant international obligations of the United Kingdom are complied with”.

One such international obligation is to enforce restrictions on TV advertising contained in the Audio Visual Media Services Directive 2010 (Directive 2010/13/EU), Article 9 of which includes the requirement that:

“Member States and the Commission shall encourage media service providers to develop codes of conduct regarding inappropriate audiovisual commercial communications, accompanying or included in children’s programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended” (Article 9, 2).

Under Section 324 of the Communications Act 2003, BCAP must consult on proposed Code changes. BCAP strives to ensure that its rule-making is transparent, accountable, proportionate, consistent and targeted where action is needed, in accordance with the Communications Act 2003. Ofcom must approve Code changes before BCAP implements them. The Communications Act requires Ofcom to set and, from time to time, review and revise, a Code containing standards for the content of broadcast advertisements carried by TV and radio services licensed under the Broadcasting Acts 1990 and 1996.

Ofcom has contracted out the setting of advertising standards to BCAP under the [Contracting Out \(Functions Relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004](#). That function is exercised in consultation with and agreement of Ofcom.

### **3. Committee of Advertising Practice**

CAP is the self-regulatory body that authors [the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing](#) (the CAP Code). Compliance with the Code is mandatory for advertising in the UK or other advertising that targets UK consumers. The Code is enforced independently by the ASA.

CAP members include organisations that represent advertising, direct and promotional marketing and media businesses. By practising self-regulation, the marketing community ensures the integrity of the wider industry. Through their membership of CAP organisations, or through contractual agreements with media publishers and other carriers, advertisers are committed to complying with the CAP Code so that marketing communications are legal, decent, honest and truthful, and consumer confidence is maintained.

Self-regulation is accepted by the Department for Business, Energy and Industrial Strategy (BEIS) and the Courts as a first line of control for non-broadcast advertising in providing protections for both consumers and the industry. The value of self-regulation as an alternative to statutory control is also recognised in European law, including the legislation governing misleading advertising (Directive [2005/29/EC](#) concerning unfair business-to-consumer commercial practices in the internal market, the “Unfair Commercial Practices Directive”). CAP and the ASA are also designated by Ofcom to regulate aspects of advertising in certain on-demand video services under the Communications Act 2003 (as amended) (see section 14 below for more details).

#### 4. ASA Strategy 2019-2023

In 2018 the ASA published our new five year strategy, entitled, [More Impact Online](#). The strategy makes a clear public commitment to strengthening further the regulation of online ads. The new strategy builds on our work in regulating more pro-actively, including through addressing risks emerging from newer forms of advertising. It puts the strong focus on online ads because people are spending more time online, businesses are increasingly advertising online and the pace of technological change online is contributing to people’s concerns. Key strands of the strategy include:

- Prioritising the protection of vulnerable people and appropriately limiting children and young people’s exposure to age-restricted ads in sectors like food, gambling and alcohol.
- Seeking to work more closely with the large online platforms, inviting their greater engagement in the ASA system and exploring opportunities to engage in and improve their advertising compliance processes, e.g. through ensuring that learnings from ASA rulings are applied automatically to analogous ads across their platforms.
- Listening in new ways, including through research, data-driven intelligence gathering and machine learning, to find out which other advertising-related issues are the most important for us to tackle.
- Exploring new technological solutions, including machine learning, to improve our regulation.

#### 5. Commitment to good regulation

The self-regulatory system has a strong commitment to transparent, proportionate and evidence-based regulation, both in the authorship of the Codes and their enforcement. The ASA, CAP and BCAP’s [Commitment to Good Regulation](#) sets out six public commitments modelled on the Government’s, [Regulators’ Code](#).

The commitments are to:

- keep regulatory burdens to a minimum;
- engage with you;
- be targeted;
- share information;
- provide advice and training support; and
- be transparent.

Like the Regulators' Code, the commitments do not detract from the core purpose of ensuring that all UK advertising is responsible. It remains important for the ASA to continue to strike the right balance between those regulated by the system and those protected by the system.

## 6. Evidence based policy

The ASA, CAP and BCAP are committed to an evidence-based approach to regulation. CAP and BCAP policy making activities are informed by [published guidance](#) on the principles governing how it considers evidence as part of the process of assessing cases for regulatory change.

## 7. Legal tests

In assessing whether to impose new restrictions on advertising, CAP and BCAP must have regard to the following key legal and regulatory considerations:

- the right to commercial freedom of expression (in most cases, the right of businesses to advertise);
- the principle that restrictions must be necessary in a democratic society for a legitimate aim, including the protection of health;
- any evidence of harm, or a real potential for harm; and
- the principle that restrictions imposed must be a proportionate means of achieving a legitimate aim: CAP and BCAP must consider whether there are less restrictive alternative means of achieving the aim.

The principal legal consideration is Article 10 of the European Convention on Human Rights (ECHR) concerning freedom of expression, which provides that:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society,

in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 10(1) of the ECHR protects the right to commercial freedom of expression (here, the right of food and soft drink advertisers to advertise their products on TV and in online media), but to a lesser degree than political, religious or cultural expression.

Advertising restrictions must be necessary in a democratic society for one of the legitimate aims listed in Article 10(2), including the protection of health or morals, and/or the protection of the reputation or rights of others. Such aims might encompass playing a contributory role in protecting children from forming poor dietary habits linked with significant, adverse health outcomes such as obesity.

Any restrictions imposed must be a proportionate means of achieving a legitimate aim. Due regard must be given to whether there are less restrictive alternative means of achieving that aim. The greater the impact of the restriction – on free speech or loss of revenues, for example – the greater the need for robust evidence to justify it. There is therefore a need to assess the potential economic impact of any proposed measure, as it might affect advertisers and media owners, against the potential regulatory benefit identified through consideration of the evidence base for a particular harm.

## B – UK Advertising Codes

### 8. Overview

CAP and BCAP's HFSS restrictions are part of a far more extensive consumer protection framework controlling all aspects of advertising directed at UK consumers.

The UK Advertising Codes are based on common principles. They seek to protect consumers, while protecting the right of responsible marketers to advertise and ensuring that marketing communications respect the principles of fair competition generally accepted in business. They also to ensure that advertising is socially responsible and that harmful marketing communications are prohibited.

- The BCAP Code sets out the advertising-related requirements for Ofcom-licensed television and radio services provided by broadcasters within UK jurisdiction. It applies regardless of whether their main audience is in the UK. Compliance with the Code is a licence condition along with the requirement for broadcasters to pre-clear advertising before it is aired to ensure compliance. Clearance services for most TV advertising are provided by [Clearcast](#) and for radio clearance services are provided by Radiocentre.
- The CAP Code is the rule book for non-broadcast marketing in the UK applying to the separate disciplines of advertising, promotional marketing and direct marketing. A key underlying principle of the Code is media neutrality; the rules apply equally across all non-broadcast media from the more established, like newspapers and magazines, to new and emerging online media platforms, like social media and native advertising.

### 9. General rules protecting children

One of the important ways the Codes achieve their objectives is through the inclusion of extensive protections for vulnerable groups; the key group identified is children (those aged 0-15 years).

Both Codes have dedicated children's sections – BCAP Code [section 5](#) and CAP Code [section 5](#) – containing rules that apply to all advertising. The rules build on the central principle that marketing communications addressed to, targeted directly at or featuring children must contain nothing that is likely to result in their physical, mental or moral harm. They also take into account the different way in which children perceive and react to marketing communications influenced by their age, experience and the context in which messages are delivered. For example, marketing communications that are acceptable for young teenagers may not necessarily be acceptable for younger children. Protections include prohibitions on marketing approaches that exploit children's credulity, pressure them to purchase or undermine parental authority.

Along with general protections, there are sector-specific rules to address particular policy issues, such as those related to age-restricted products like gambling and

alcohol, or other sensitive products where there is a potential for harm, such as food and soft drinks (see parts C and D below for a full outline of these rules).

The Codes include general requirements for all audiences, such as those ensuring that advertising is lawful and does not mislead consumers, alongside specific technical provisions around issues like pricing and promotions. Such rules often give effect to legislative provisions. Those rules ensure the Code is relevant and they help marketers to satisfy the Codes' general requirement to comply with the law. In practice, the ASA's administration of rules that reflect legislation is often sufficiently effective that recourse to statutory regulatory bodies and the Courts is considered undesirable and unnecessary.

The following provisions are particularly relevant to the present consultation on HFSS advertising to children:

- Direct exhortations for children to purchase a product are prohibited by both Codes. This reflects the requirements of general consumer protection law and means marketers must not directly ask children to buy products.
- The CAP Code includes rules on the [recognition of advertising](#); it is a core principle that consumers must be able to recognise when they are being advertised to. Noting the needs of younger children in that respect, CAP has [published guidance](#) on how marketers using certain online marketing techniques, such as advergames or influencers, should disclose their commercial intent.
- Marketers must [comply with rules](#) based on legislation governing the collection of personal data, including that of children.

The Codes contain dedicated sections – BCAP section 13 and CAP section 15 – focusing on food and soft drink advertising. Alongside the HFSS rules, these sections also reflect general food law; primarily, [Regulation \(EC\) No 1924/2006 on nutrition and health claims made on foods](#) (the NHCR). The NHCR seeks to protect consumers from misleading or false nutrition and health claims (for example, claims that a product is high or low in a particular nutrient, that a product has a particular health benefit or that a product, in general, is good for health). It harmonises legislation across the EU by placing controls on the use of nutrition and health claims, including those that relate to children (see also BCAP rule 13.11 and CAP rule 15.17 summarised below). Claims are authorised at EU-level based on an assessment of the evidence supporting them. Their use in advertising is subject to strict criteria being met.



## 10. Remit of the BCAP Code

The BCAP Code applies to all radio and television advertisements broadcast on services licensed by Ofcom, including:

- teleshopping<sup>1</sup>;
- content on self-promotional television channels;
- television text; and
- interactive television advertisements

The Code defines "advertisement" to mean publicity by advertisers, including spot advertisements and broadcaster promotions with advertisers (outside programme time), that is broadcast in return for payment or other valuable consideration to a broadcaster or that seeks to sell products to viewers or listeners. The promotion of broadcasters' own-branded activities, goods and events (such as websites, t-shirts and concerts), which enhance audience involvement and are not designed to make a profit or promote commercial partnerships, are excluded from scope.

Several aspects of regulating advertising on TV and applying the BCAP Code involve Ofcom in a direct capacity beyond its underlying role as BCAP's co-regulatory partner:

- The investigation of complaints in relation to participation TV<sup>2</sup> remains a matter for Ofcom. Participation TV includes, for example, long form television advertisements for adult chat, adult sex chat, psychic chat, quiz call, dating and gambling services.
- The ASA refers complaints about Participation TV to Ofcom who determine whether a complaint identifies a breach of the BCAP Code.
- Ofcom requires adherence to the BCAP Code for the content of programme sponsorship credits as well as relevant parts of the Broadcasting Code<sup>3</sup>.

The BCAP Code does not apply to programming, including commercial references (for instance, product placement) within a programme, which are regulated by Ofcom under the [Ofcom Broadcasting Code](#).

The ASA refers complaints about programme sponsorship credits, product placement and undue commercial prominence within programming to Ofcom.

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<sup>1</sup> "Teleshopping" means television-broadcast direct offers for the supply of goods and services, including immovable property, rights and obligations, in return for payment (BCAP Code, *Introduction*, b(III)).

<sup>2</sup> "Participation television" means long-form television advertising for direct-response, remote entertainment services that typically include the possibility of interacting with broadcast content.

<sup>3</sup> See [section 9.19-9.25](#) of The Ofcom Broadcasting Code for further details.

## 11. Remit of the CAP Code

The CAP Code sets standards governing a significant majority of business-to-consumer and business-to-business marketing practices. There are broadly four categories of communication, those appearing in:

- offline paid for space;
- offline non-paid for space;
- online paid for space; and
- marketers' own (i.e. non-paid for) space online.

Non-broadcast media covered by the Code in offline paid for space include advertisements in newspapers, magazines, brochures and promotional marketing. Non-paid for communications include mailings, text transmissions (including SMS and MMS). The Code applies to other types of commercial activity in certain circumstances:

- Packages, wrappers, labels and price lists are outside remit unless they advertise another product or promotional marketing or are visible in a marketing communication.
- Point-of-sale displays in retail premises are also excluded, except those covered by the promotional marketing rules.
- Sponsorship arrangements are also outside the scope of the Code. However, marketing communications that refer to sponsorship are covered.

The CAP Code also applies extensively to online marketing in paid for space, including:

- online advertisements in paid-for space (including banner or pop-up advertisements and online video advertisements);
- paid-for search listings;
- preferential listings on price comparison sites;
- viral advertisements;
- in-game advertisements;
- commercial classified advertisements;
- advergames that feature in display advertisements;
- advertisements transmitted by Bluetooth;
- advertisements distributed through web widgets; and
- online promotional marketing and prize promotions.

## 12. CAP's online remit and marketer's own space

Since March 2011, the Code's remit has also included online marketing communications in non-paid for space<sup>4</sup>. The Code covers:

“Advertisements and other marketing communications by or from companies, organisations or sole traders on their own websites, or in other non-paid-for space online under their control, that are directly connected with the supply or transfer of goods, services, opportunities and gifts, or which consist of direct solicitations of donations as part of their own fund-raising activities.”

Examples of advertiser's own websites include brand sites, product pages and e-commerce sites. The key strength of this part of CAP's remit is that the “directly connected with” test allows the ASA the flexibility to enforce the Code in diverse online environments; in particular, those where the traditional lines between editorial content and marketing communications have blurred and factors like user-generated content have further complicated matters.

Other non-paid-for space online under marketers' control primarily includes social media platforms such as Facebook, Twitter, Instagram and Snapchat. It also applies to other type of online platform under a marketer's control such as video sharing platforms like YouTube and gaming platforms like Twitch.

The following illustrate how the remit of the CAP Code applies to different online platforms:

- Social networks – the Code covers both native advertising served into users' timelines or feeds as well as marketing communications posted organically in marketers own accounts/feeds.
- Video sharing platforms – the Code covers served ads (both video and display), videos on marketers' channels and other self-promotional content, and videos created by third parties (such as influencers) where marketers have paid for and control the content.
- On-demand services – the Code covers ads served in and around editorial content.

## 13. Jurisdiction and other limitations to scope

The CAP's online remit is subject to important limitations related to jurisdiction. For example, a global brand site that does not target UK consumers specifically would fall outside remit<sup>5</sup>.

The Code does not cover website content characterised as editorial content, news or public relations material, corporate reports and natural listings on a search engine or

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<sup>4</sup> This CAP Advice Online article, '[Remit: Own Websites](#)', provides more detail of the process of determining online remit.

<sup>5</sup> This CAP Advice Online article, '[Remit: Country of Origin](#)', provides more detail on how we determine remit when assessing online marketing communications from parties based in other jurisdictions.

a price comparison site<sup>6</sup>. Another important limitation is the Code's requirement that marketers both pay for and control a communication for it to be within remit. These criteria are particularly relevant for video bloggers, influencers and other social media third parties who interact with brands<sup>7</sup>. For example, in relation to food and soft drink advertising, 'unboxing videos' are common on social media and feature branded products but are not within remit unless the payment and control tests are met.

## 14. Video-on-demand

Some video-on-demand services ("regulated on-demand services") are subject to [statutory provisions](#) of the Communications Act 2003. CAP and the ASA's regulation of certain on demand services is therefore carried out under a co-regulatory arrangement with Ofcom (for the avoidance of doubt, this is separate to BCAP and Ofcom's relationship for broadcast advertising). The ASA is the designated by Ofcom to carry out the required regulatory functions.

It should be noted that the relevant regulations apply to media service providers of regulated on-demand services. The CAP Code includes rules in a dedicated annex reflecting the relevant legal requirements. The rules apply only to advertising "included" in a regulated on-demand service, which is advertising that can be viewed by a user of the service as a result of the user selecting a programme to view.

Failure to ensure that advertising included in a regulated on-demand service complies with these rules may result in the matter being referred to Ofcom. If Ofcom concludes that the media service provider has contravened the relevant requirements of the Communications Act 2003, this may lead to Ofcom considering imposing a statutory sanction against the provider.

## 15. Enforcement of the BCAP Code

Non-compliance with ASA rulings on TV advertising is extremely rare. When the ASA feels a complaint is justified, it can take action with the broadcaster concerned. The ASA can require the broadcaster to withdraw the advertisement immediately, amend it or suspend it while investigations are carried out. The terms of broadcasters' licenses, the way broadcast systems function and the involvement of Clearcast in granting clearance for ads to be aired means ads found in breach of the Code can be quickly removed.

For serious or repeated breaches of the Code, Ofcom may impose sanctions, ranging from a formal warning to a request for broadcast correction or a statement of findings, a fine or the shortening, suspending or taking away of a licence to broadcast. The ASA has not referred a case to Ofcom during the past five years.

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<sup>6</sup> CAP Code, [Scope of the Code](#), II q.

<sup>7</sup> This CAP Advice Online article, '[Video blogs: Scenarios](#)', gives practical examples of how remit is determined in a variety of situation where marketers interact with third parties. CAP has also produced an '[Influencer Guide](#)' setting out the criteria and rules that apply to such marketing.

## 16. Enforcement of the CAP Code

The CAP Code includes advertising restrictions established through public consultation: restrictions that approximate legal provisions and other restrictions that have no direct underpinning in law. In the vast majority of cases, advertisers comply with the Code at the outcome of an ASA investigation.

The ASA has a variety of first line, [self-regulatory sanctions](#) to address those who refuse to comply including notices advising media providers to withhold media space or withdraw trading privileges like bulk discounts for direct mailings. For online, there further dedicated measures. Non-compliant advertisers' name and details of the problem with their advertising may be featured on a dedicated section of the ASA website, designed to appear in search engine results when a consumer searches for a company's website. If necessary, the ASA can place advertisement appearing in search engine results.

Ultimately, the ASA administers the CAP Code through a system of 'collective regulation', which involves a mix of self- and co-regulatory enforcement mechanisms. Through collective regulation the ASA is able to secure compliance in almost 100% of cases where it identifies a breach of the CAP Code, including online. Statutory bodies like the Competition and Markets Authority, Trading Standards and the Gambling Commission trust CAP to set and the ASA to enforce advertising restrictions that relate to their statutory responsibilities. And, they agree to act as the ASA's statutory backstop in those very rare instances where the ASA is unable to secure compliance with the advertising rules.

Those instances are rare because, on the self-regulatory side, UK media providers agree to act as gatekeepers for the ASA. If the ASA identifies a problematic ad (through an investigation or pro-active monitoring) on social media, in cinemas, on billboards or in magazines, for example, those organisations commit to act quickly to remove the ad.

## C – HFSS advertising rules for TV

### 17. Overview

The BCAP Code includes dedicated rules on HFSS advertising, introduced in 2007, that cover both content and scheduling:

- HFSS ads must not appear on children’s channels or be scheduled in or around children’s programming or during programming where they are over-represented in the audience.
- Marketing techniques that are particularly impactful are prohibited in HFSS ads directed at pre- and primary school children.

There are also general rules for all food and soft drink product advertising which include child-oriented provisions to restrict the inclusion of irresponsible marketing techniques or messages.

[Section 13](#) of the BCAP Code sets out requirements for food and soft drink advertising.

### 18. Responsible broadcast food and soft drink advertising

In line with its general emphasis on ensuring all broadcast advertising is socially responsible, the Code has general responsibility provisions covering all food advertising with a particular focus on the need to protect children from irresponsible messaging.

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

13.2.1 Advertisements must not condone or encourage damaging oral healthcare practices, especially in children.

The rules are intended to give the ASA broad scope to take action against irresponsible messaging and marketing techniques; for instance, depictions of behaviour such as eating before bedtime, irresponsible snacking between meals or excessive consumption of an advertised product.

### 19. Defining HFSS products and advertisements

HFSS products are identified using the Department of Health and Social Care (DHSC) [nutrient profiling model](#). This was developed by the Food Standards Authority in 2005 to support the restrictions then being considered by Ofcom.

A broad view of what constitutes an HFSS product advertisement is taken to ensure that the interplay between product references, branding and other creative techniques do not undermine the restrictions. The HFSS restrictions apply to

advertisements likely to have the effect of promoting an HFSS product, or products, even if the product is not depicted or referred to directly.

BCAP has had [guidance](#) to identify brand advertising that is subject to the HFSS rules since 2007. This was revised and strengthened when CAP introduced its HFSS rules in 2017. The guidance now supports the application of the rules in both Codes. The revised guidance, [Identifying brand advertising that has the effect of promoting an HFSS product](#), sets out several scenarios of circumstances where an approach taken in a particular ad is likely to have the effect of promoting an HFSS product (or products) or not.

The revised guidance ensures that the HFSS restrictions are applied to the use of branding (e.g. logos, characters or livery) directly related to an HFSS product and branding related to range of products where the majority of product variants are HFSS. One of the key ways marketers – particularly those promoting ranges of products – can comply with the Code is clearly promote a non-HFSS product offering.

One of the important changes in the revised guidance introduced in 2017 is that it applies to company-level branding where a company is so synonymous with the provision of HFSS products that the presence of its brand logo (or other related branding) is likely to have the effect of promoting those products.

Examples of the application of the brand advertising guidance are included in the summary of ASA casework in Parts E and F below.

## 20. HFSS TV scheduling restrictions

BCAP Code section 32 sets out the rules on scheduling of broadcast advertising. The HFSS scheduling restriction states:

32.5 These products may not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 16:

32.5.1 food or drink products that are assessed as high in fat, salt or sugar (HFSS) in accordance with the nutrient profiling scheme published by the Food Standards Agency (FSA) on 6 December 2005. Information on the nutrient profiling scheme is now available on the Department of Health website [...]

The existing restrictions seek to strike an appropriate and proportionate balance: weighing up evidence of HFSS advertising's impact on children's food preferences against the intrusion into adult viewing time, the rights of advertisers and the economic and other impacts on broadcasters. The rules apply throughout the schedule meaning programming appearing later in the evening is subject to the restrictions.

## 21. Scheduling and audience indexing

It is usually straightforward for broadcasters to identify a programme commissioned for or principally directed at children by considering the intended audience of the programme at commissioning or acquisition stage. A clear example of this is programming included on a dedicated children's channel.

For most TV channels, the likelihood of a programme appealing particularly to children is determined by a process of 'audience indexing', which involves the use of Broadcast Audience Research Board (BARB) data. Audience indexing helps to determine how likely a programme is to reach viewers in a particular age category, relative to the whole audience. The process allows these TV channels to identify a programme (or programme part in the case of long-form programming such as that on music channels), before it is broadcast, that appeal disproportionately to children by reference to an age category index score for each programme. If an age group e.g. 4-15s, has an audience index of 100, it means that that group is proportionally represented in the programme audience in relation to its share of the total TV audience. An index of 120 means it is over-represented by 20%, which BCAP considers to be a sufficiently significant share of the audience to indicate that the programme is likely to have particular appeal to that age group.

BCAP has produced [detailed technical guidance](#) to assist broadcasters in making scheduling decisions across a broad range of sensitive product categories as well as HFSS. The guidance requires them to constantly assess audience trends to identify programmes of likely particular appeal. This also involves actively monitoring audience trends to identify programmes whose appeal changes over time in order to apply restrictions appropriately. Ultimately, the guidance, backed by subsequent ASA rulings<sup>8</sup>, urges broadcasters to take a cautionary approach to scheduling decisions where the audience data is not clear cut.

## 22. HFSS TV content restrictions

The protections afforded by the scheduling restriction are enhanced by dedicated rules controlling the content of HFSS advertisements. These address marketing techniques that evidence suggests are particularly impactful for younger children. As the scheduling restrictions limit exposure, these rules reduce the impact of HFSS advertisements that children do see beyond the effect of scheduling restrictions in limiting overall exposure.

The first controls the use of promotions.

13.9 Television only – Promotional offers 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.

Promotional marketing can provide an incentive for the consumer to buy by using a range of added direct or indirect benefits, usually on a temporary basis, to make the

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<sup>8</sup> For example, the ASA's ruling on [Box Television Ltd t/a Box TV](#) related to the scheduling of alcohol advertisements; the scheduling rule for that product category is analogous to that for HFSS.



product more attractive. This includes a broad range of offers from price-based promotions (“50% off”), volume-based promotions (“33% Extra”) to collection-based promotions and competitions.

This rule is accompanied by further, general rules governing promotional offers and the creative approaches and messages that may be used alongside them in ads including a promotion (see section 23 below for more details).

The second rule controls the use of licensed characters and celebrities popular with children.

13.10 Television only – 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.

That 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.

Licensed characters and celebrities popular with children may present factual and relevant generic statements about nutrition, safety, education or similar.

Such characters were found to be particularly influential as they are part of children’s media lives; for instance, in films or television of interest to children. It is notable that Ofcom did not extend the restriction to equity brand characters. They were found to have a lesser effect as they had no existence beyond marketing and Ofcom recognised the often significant investment brands had made into develop characters over a period of years.

## **23. Content restrictions for all TV food advertising**

The Code also ensures that food and soft drink advertising, in general, is responsible in its use of marketing techniques likely to influence children. These rules build the general responsibility requirements of the Code noted above. One of the key areas is controlling the use of techniques or messages that might encourage excessive consumption or purchases.

Alongside rule 13.9 (see section 22 above) limiting the use of promotions in HFSS advertising, there are several general requirements:

13.9.1 Advertisements featuring a promotional offer linked to a food product of interest to children must avoid creating a sense of urgency or encouraging the purchase of an excessive quantity for irresponsible consumption

13.9.2 Advertisements must 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

13.9.3 Advertisements for collection-based promotions must not seem to urge children or their parents to buy excessive quantities of food. They must not directly encourage children only to collect promotional items, emphasise the number of items to be collected or create a sense of urgency. If a promotional offer can also be bought, that must be made clear. Closing dates for collection-based promotions must enable the whole set to be collected without having to buy excessive or irresponsible quantities of the product in a short time

13.9.4 Advertisements must not encourage children to eat more than they otherwise would. The notion of excessive or irresponsible consumption relates to the frequency of consumption as well as the amount consumed. [...]

As noted in section 9 above, the use of nutrition and health claims is controlled by a framework of restrictions established by European law. A specific rule for children builds on the general protections set out in the Code reflecting the NHCR as it applies to advertising directed at consumer in general.

13.11 Television only – No nutrition or health claim may be used in HFSS product advertisements targeted directly at pre-school or primary school children. For the avoidance of doubt, claims referring to children's development or health are acceptable in non-HFSS product advertisements, if those claims are authorised by the European Commission.

Advertisers must also avoid irresponsible marketing approaches and techniques. In many cases, the rules in the food section provide more focused protections building on general provisions for children set out in section 5 of the BCAP Code. They seek to address issues related to children's vulnerabilities inherent to their stages of mental and social development. They prohibit irresponsible appeals from advertising that might exploit them; a ban on encouragement of 'pester power' is a prime example.

13.12 Television only – Although children might be expected to exercise some preference over the food they eat or drink, advertisements must be prepared with a due sense of responsibility and must not directly advise or ask children to buy or to ask their parents or other adults to make enquiries or purchases for them. (Please see rule 5.9 in Section 5: Children)

13.12.1 Nothing in an advertisement may seem to encourage children to pester or make a nuisance of themselves

13.12.2 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

13.12.3 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

13.12.4 Advertisements addressed to children must not urge children to buy or persuade others to buy and must avoid high-pressure or hard-sell techniques. Neither the words used nor the tone of the advertisement should suggest that young viewers could be bullied, cajoled or otherwise put under pressure to acquire the advertised item

13.12.5 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".

## 24. Pre-clearance

Broadcasters are required as a condition of their licenses to pre-clear advertising before it is aired to ensure compliance with the BCAP Code. Clearcast provides clearance services for the vast majority of TV advertising. The pre-clearance process ensures that most compliance requirements are addressed in the development stages of the ad creative.

In relation to food and soft drink advertising, the pre-clearance process ensures that ads for HFSS products are identified effectively so that broadcasters can schedule them in accordance with the BCAP rules. Clearcast requires advertisers to actively demonstrate that their product or products featured in an ad comply with the nutrient profile model's definition of non-HFSS. If such evidence is not provided, the ad is classified by default as an HFSS advertisement.

## 25. Development of the BCAP rules

In 2003, the Government asked Ofcom to consider new restrictions on food and soft drink advertising to children amid growing concern over children's diets and rates of obesity. Over-consumption of HFSS foods and an under-consumption of fresh foods, fruit and vegetables was regarded as a key problem.

Ofcom defined its policy objectives as being to:

- reduce significantly the exposure of younger children<sup>9</sup> to HFSS advertising, as a means of reducing attempts to persuade children to demand and consume HFSS products;
- enhance protection for both older and younger children as well as parents by appropriate revisions to advertising content standards;
- reduce the risk that children and parents may misinterpret product claims;
- avoid disproportionate impacts on the revenue of broadcasters;

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<sup>9</sup> It should be noted that Ofcom's objectives evolved during the consultation to focus on all children (under-16s).

- avoid intrusive regulation of advertising during adult airtime, given that adults are able to make informed decisions about advertising messages;
- ensure that any measures that are put in place are appropriate and sufficiently timely to enable Government to observe whether there have been changes to the nature and balance of food promotion by early 2007.

## 26. Evidence base identified by Ofcom

Ofcom carried out an [extensive research project](#) to review existing academic literature, the state of children's diet and lifestyle, and trends in advertising. It also carried out quantitative and qualitative research to identify influences on children's food preferences, purchase behaviour and consumption and the role of TV advertising within this wider context.

A key part of this process was the literature review Ofcom commissioned, Livingstone and Helsper (2004) [Advertising 'unhealthy' foods to children: Understanding Promotion in the Context Of Children's Daily Lives. A review of the literature for the Market research Department of the Office of Communications](#), and a later update, Livingstone (2006), [Television advertising of food & drink products to children](#), to inform its policy making as it considered new restrictions for TV advertising.

Livingstone (2006) found that there was a consensus in the academic literature that advertising had an influence on children. The experimental evidence considered suggested that TV advertising had a modest direct effect on the food preferences of children aged 2-11. The experimental and survey evidence suggested that the effects were likely to be small, but some suggested that exposure to food and soft drink advertising accounted for a 2% variation in food choice. It also found evidence of a modest but consistent association between overall TV exposure and weight/obesity. However, whether the influence of advertising messages viewed or the sedentary nature of TV viewing were causal factors was not clear. Livingstone noted, although the effect might have been small, many researchers were concerned that it could equate to significant numbers of children and the cumulative effect of advertising exposure could also be more significant.

Livingstone (2006) concluded that multiple factors combined to account for obesity; from the individual and family level to systemic factors such as food production, distribution and pricing and influences, such as media and social and cultural norms. These factors were seen to act indirectly, as well as directly, making it overly simplistic to regard each as playing a separate role. Based on this, Livingstone found agreement among experts that the most effective intervention strategy should be multi-faceted.

Importantly, Livingstone also cautioned against relying on the extent to which individual factors can be determined to influence preferences, knowledge and behaviour. Livingstone regarded it as a polarising influence on debate considering that emphasis should ideally shift toward a "probabilistic assessment of range of risks to children's health and should take us into a broader and potentially more

productive discussion of the range of factors involved in children's food choice" (Livingstone, 2006).

## 27. Consultation and introduction of TV HFSS restrictions

Ultimately, taking all the strands of research and analysis together, the results formed the basis of Ofcom's subsequent consultations on TV food advertising. Ofcom concluded that:

- Children's food preference, consumption and behaviour are multi-determined.
- The rise in obesity levels amongst children is similarly multi-determined, against a backdrop of key lifestyle changes over the past few decades.
- People see parents as primarily responsible for improving children's diets. Schools and food manufacturers are also seen to play an important role. The role of government, the media, supermarkets and broadcasters was not perceived to be as important as these three.
- There is a trend for children to increasingly influence their own diet with the acquiescence of their parents.
- TV advertising forms a smaller part of a larger social issue.
- Solutions to the problem of obesity need to be multi-faceted (Ofcom, 2004: section 1.9)

In March 2006, Ofcom [consulted on a range of different options](#) for new restrictions including three proposed packages of measures, a pre-9 pm ban and voluntary self-regulation.

The consultation resulted in the introduction of rules to control the placement and content of HFSS ads on TV outlined above using the then Food Standards Agency (now DHSC) nutrient profiling model to define the products covered. The package of content restrictions (as detailed in section 22 above) was developed by BCAP to limit the impact of HFSS ads was also adopted.

## 28. Option of a pre-9pm timing restriction

Through its consultation, Ofcom discounted the option of a pre-9pm ban on HFSS ads. Although such a restriction would lead to a very significant reduction in exposure and received significant support from some consultation respondents, Ofcom considered that even complete elimination of HFSS advertising would only have a modest direct effect on food preferences amongst children. It also considered that such an intervention:

- would have a significant impact on broadcaster revenues – some £211m after mitigation – and the resultant detriment to the provision of children's programming;
- was relatively inefficient in targeting intervention at children, reducing 5.5 adult impacts for every 4-9 child impact or 11.4 adult impacts for every 4-15 child impact restricted;

- would represent a significant intrusion on adult viewing and limit advertisers' ability to reach a legitimate audience for their products; and
- could prove counterproductive, resulting in an increase in HFSS advertising on other, at that time, less regulated media like online.

## 29. Regulatory impact of the TV HFSS rules

In 2010, Ofcom [reviewed the impact of the new restrictions](#), including data modelling comparing levels of exposure before and after the introduction of the rules. It concluded that they had:

- reduced children's exposure to HFSS advertising significantly (37% overall), particularly in the case of younger children (52%);
- led to a sharp drop in HFSS advertising featuring various advertising techniques considered attractive to children, such as popular cartoon characters; and
- contributed to a significant shift in the balance of food and drink advertising on television towards non-HFSS products, which accounted for an estimated 33.1% all food and drink advertising spots in 2009 as against 22.5% in 2005 and 41.1% of all food and drink child impacts in 2009, as against 19.3% in 2005.

Ofcom concluded that the new rules had met its regulatory objectives.

## D – HFSS advertising rules for online media

### 30. Overview

CAP's HFSS rules came into effect in 2017. The CAP HFSS rules apply across all media covered by the Code including online.

Before this, CAP's rules controlling food and soft drink advertising to children applied to all products and did not distinguish between HFSS and non-HFSS products. The rules focused on the content of such advertisements but not their placement (see section 38 below for more details on CAP's rationale for this).

The framework for restricting HFSS advertising in non-broadcast media is now broadly the same as that for TV. CAP based its work to introduce dedicated HFSS restrictions on the BCAP model set out in Part E above. However, CAP recognises that many non-broadcast marketing communications – from traditional direct mailings to forms of online display advertising – are targeted to varying extents using data about individuals held by marketers rather than at the wider audience for a piece of content.

Rule 15.18 requires that HFSS advertisements must not be:

- placed in children's media;
- placed in one-to-many media where children make up more than 25% of the audience; or
- targeted directly at individuals who are known or could reasonably be expected to be under 16.

As with BCAP, there are also general rules for all food and soft drink product advertising protecting children from irresponsible marketing techniques or messages.

### 31. Responsible non-broadcast food and soft drink advertising

Section 15 of the CAP Code sets out requirements for all food and soft drink advertising. It includes provisions on general responsibility that give the ASA broad scope to act against irresponsible marketing techniques or messages.

15.11 Marketing communications must not condone or encourage poor nutritional habits or an unhealthy lifestyle in children.

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

### 32. Defining HFSS products and advertisements

As part of its consultation process, CAP chose to adopt the DHSC [nutrient profiling model](#) used by BCAP to define HFSS products. Through consultation, CAP

concluded that the model best satisfied the criteria of proportionality, usability and credibility. Importantly, it had a strong history of use under the BCAP framework among key stakeholders.

At the same time, CAP noted the then [ongoing review](#) of the model being carried out at Government's request by PHE. Acknowledging the likelihood that a revised model would change the definition of which products fall into the HFSS category subject to ad restrictions, CAP committed to assess and report publicly on the potential regulatory implications<sup>10</sup>. In the event of significant implications, CAP committed to consult on the potential adoption of the new model.

For the same reasons as BCAP, CAP also takes a broad view of what constitutes an HFSS product advertisement. See section 19 above for further details of the CAP and BCAP's guidance, [Identifying brand advertising that has the effect of promoting an HFSS product](#).

### 33. HFSS non-broadcast placement restrictions

The HFSS placement restriction states:

15.18 HFSS product advertisements must not be directed at people under 16 through the selection of media or the context in which they appear. No medium should be used to advertise HFSS products, if more than 25% of its audience is under 16 years of age.

In principle, this means no HFSS ads may be placed in children's media. As with the BCAP scheduling restriction, it is usually straightforward to identify children's media; for example, a children's games website, activities app or video sharing platform channel including content with themes from fairy tales or nursery rhymes. For the purposes of various online media, in particular, this also applies to specific pieces of content, for example, a particular video on a video sharing site or part of a website dedicated to children.

For media intended for a wider audience, the compliance approach depends on how the ad is targeted.

### 34. Placement and targeting in non-broadcast media

Broadly, marketing communications can be targeted:

- on the basis of the audience composition of the media or specific piece of content around which a marketing communication appears; and/or
- through the use of data, when creating the audience for a marketing communication.

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<sup>10</sup> As of the date of writing, the outcome of the PHE has not been made public.



It is the responsibility of marketers to satisfy the ASA by providing robust evidence that they have been diligent in forecasting the likely audience for a marketing communication and complied with CAP's rules. If marketers cannot provide such evidence, there is a significant likelihood that the ASA will find them in breach. The approach to enforcement addresses the fact that solid audience data is sometimes unavailable by urging advertisers to exercise caution where the likely make-up of an audience is not clear.

Marketers must also ensure that they take all reasonable steps to use the data available to include or exclude individuals on the basis of their age or other relevant criteria. No under-16s or individuals who, due to their online behaviour, are likely to be under 16 should be targeted directly with HFSS advertising.

Examples of the application of the brand advertising guidance are included in the summary of ASA casework in Part F below.

### **35. CAP guidance resources**

CAP has published guidance resources that outline its policies on placement and the ASA's interpretation of the requirements of rule 15.18.

The [guidance](#) on non-broadcast ad placement outlines CAP's general approach to targeting issues across all non-broadcast media. Additionally, CAP has produced [guidance](#) on how marketers should use the tools available on social network platforms – systems that allow advertisers to define their target audience(s) using data from users' accounts or from other behaviour or interactions – to ensure, as far as possible, that children are excluded from groups of users targeted with categories of product advertising that are subject to placement restrictions.

### **36. HFSS non-broadcast content restrictions**

As with BCAP (see section 22 above), the protections afforded by the placement rule are enhanced by dedicated restrictions on the content of HFSS advertisements. These address marketing techniques that evidence suggests are particularly impactful on younger children.

The first rule controls the use of promotions.

15.14 HFSS product advertisements that are targeted through their content directly at pre-school or primary school children must not include a promotional offer.

The second rule covers the use of licensed characters and celebrities popular with children.

15.15 Licensed characters and celebrities popular with children must be used with a due sense of responsibility. HFSS product advertisements that are targeted directly at pre-school or primary school children through their content

must not include licensed characters or celebrities popular with children. For the avoidance of doubt, that 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.

Licensed characters and celebrities popular with children may present factual and relevant generic statements about nutrition, safety, education or similar.

### **37. Content restrictions for all non-broadcast food advertising**

As with BCAP (see section 23 above), the CAP Code also ensures that food and soft drink advertising in general is responsible in its use of marketing techniques that might influence children. These rules build on the general responsibility requirements noted in section 31 above.

Alongside rule 15.14 limiting the use of promotions in HFSS advertising, there are several general requirements:

15.13 Marketing communications featuring a promotional offer must be prepared with a due sense of responsibility.

15.14 [...] Additionally, for children under 16:

15.14.1 Except those for fresh fruit or fresh vegetables, marketing communications must 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 must ensure a significant presence for the product

15.14.2 Marketing communications featuring a promotional offer linked to a food product of interest to children must avoid creating a sense of urgency or encouraging the purchase of an excessive quantity for irresponsible consumption

15.14.3 Marketing communications must not encourage children to eat more than they otherwise would

15.14.4 Marketing communications for collection-based promotions must not seem to urge children or their parents to buy excessive quantities of food. [...]

Advertisers must also avoid irresponsible marketing approaches and techniques. In many cases, the rules in the food section provide more focused protections related to food advertising building on general protections for children set out in section 5 of the CAP Code.

15.16 Although children might be expected to exercise some preference over the food they eat or drink, marketing communications must be prepared with a due sense of responsibility and must not directly advise or ask children to buy or to ask their parents or other adults to make enquiries or purchases for them (see rule 5.4.2).

15.16.1 Marketing communications must 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.

15.16.2 Marketing communications addressed to children must not urge children to buy or persuade others to buy and must avoid high-pressure or hard-sell techniques. Nothing must suggest that children could be bullied, cajoled or otherwise put under pressure to acquire the advertised item.

15.16.3 Products or prices must not be presented in marketing communications in a way that suggests children or their families can easily afford them.

The use of nutrition and health claims is controlled by a framework of restrictions established by European law. A specific rule for children builds on the general protections set out in the Code (see section 9 above) reflecting the NHCR as it applies to advertising directed at consumer in general.

15.17 Claims referring to children's development and health are acceptable if authorised by the European Commission.

## **38. Development of the CAP rules**

Between 2007 and 2017, it is important to note there were no dedicated restrictions on HFSS advertising in non-broadcast media. At the same time as Ofcom considered new restrictions in broadcast media, CAP was asked by Government to explore the issue in relation to non-broadcast. Applying findings from the evidence base to non-broadcast advertising was difficult as nearly all the significant research identified by Ofcom related to TV advertising. It nevertheless suggested that there was likely to be some relationship between non-broadcast advertising and children's dietary behaviours. In response, CAP introduced creative content restrictions on the use of promotions and celebrities and licensed characters popular with children in food and soft drinks advertising targeted at children aged 11 or younger. However, without evidence to show that non-broadcast advertising had a similar level of effect to TV, CAP considered that it was not justified in introducing media placement restrictions on food and soft drink advertising in non-broadcast media.

CAP introduced the non-broadcast HFSS advertising rules in 2017 to respond to continuing concerns about HFSS advertising's impact on children, recognising the

emergence of online media such as advertising platforms as well as the shifts in children's media consumption over the preceding decade.

### 39. Consultation objectives

CAP consulted on new HFSS rules in 2016. The objective was to explore the degree to which HFSS advertising in non-broadcast media should be further restricted; specifically, whether new rules should be introduced to limit the placement of HFSS product advertising in non-broadcast media. CAP consulted on proposals to adopt what was broadly the model of restrictions developed by Ofcom in seeking to appropriately limit exposure to and the impact of such ads.

### 40. CAP's assessment of the evidence base

CAP's case for change was not driven by new understanding of the level of food and soft drink advertising's effect on children's behaviour in the non-broadcast media. The consultation nevertheless noted new evidence had emerged; in particular CAP noted the literature review supporting PHE's Sugar Reduction report<sup>11</sup> and a then recent systematic review<sup>12</sup> as summaries of the evidence-base emerging since 2007.

CAP concluded, however, that the level of non-broadcast advertising's effect on children's food preferences and dietary behaviour suggested by the evidence had not changed significantly in that time. The evidence aligned with the picture Ofcom identified; a strong suggestion of a link but an effect likely to be short-term and relatively small when compared to factors like parental influence.

CAP noted, in general, that the evidence base continued to focus disproportionately on TV advertising with little research covering advertising in traditional media such as magazines and posters. Although some audio-visual online advertising online is often similar to that broadcast on TV, CAP noted very few original studies looking at online environments. The exception, several experimental studies involving advergames (ad formats characterised by high levels of protracted interaction), were not considered to be representative of most online advertising types or traditional non-broadcast media types.

In establishing a case for regulatory change, CAP considered the evidence of non-broadcast advertising's effect in its wider context, including the scale and costs of the wider public health issue around diet and obesity. Central to CAP's decision were considerations around:

- developments in online advertising – the significant changes to the media landscape and the new opportunities that advertisers now have to engage children online; and

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<sup>11</sup> Ells et al (2015), [A mixed method review of behaviour changes resulting from marketing strategies targeted at high sugar food and non-alcoholic drink](#),

<sup>12</sup> Boyland et al (2016) is a systematic review of a series of experimental studies over the preceding decade, which specifically seeks to assess the dynamics and impact of 'acute' exposure

- children’s changing media habits – the changing balance of children’s media consumption and their increasing use of online platforms.

In balancing the evidence, likely economic impact and the wider context, CAP determined that there was a case for advertising regulation to go further and introduce placement restrictions. Ultimately, CAP considered that even a very small positive impact from new restrictions could equate to a meaningful mitigation of harm to children and, in turn, the wider detriment associated with childhood obesity as a risk factor in adult ill-health.

#### **41. Consultation and introduction of HFSS restrictions**

CAP consulted publicly in 2016. The consultation concluded that dedicated HFSS ad placement and content restrictions (as outlined above) should be adopted.

CAP also concluded, specifically, that the placement restriction be set at under 16, in line with the approach taken by BCAP. It also concluded that the rules on the use of promotions (15.14) and licensed characters and celebrities popular with children in ads directed at under-12s (15.15) should be relaxed to apply only to HFSS products. From 2007-2017, the rules applied to all advertisements. With CAP’s decision to implement dedicated HFSS restrictions, the rules were revised and their scope narrowed to apply only to HFSS products in line with the approach taken by BCAP. One of CAP’s considerations in making this decision was the potential encouragement for healthier products (including those reformulated) to advertise using the previous prohibited techniques.

The consultation process also resulted in changes BCAP’s guidance on HFSS brand advertising. As noted in section 19 above, the guidance was revised to apply to both CAP and BCAP and strengthened to better meet the objective of restricting advertisements that directly promoted HFSS products and those likely to do so through the use of marketing techniques like product and company branding or the use of characters.

The rules came into effect in July 2017. Their effectiveness is presently subject to a 12-month review. This process will conclude once the outcome of the government consultation is known (see section 28 of the main response for more details on this).

## E – BCAP enforcement

### 42. Overview

In terms of enforcement, the rate of compliance for TV food and soft drink advertising is exceptionally high with very few ASA cases over the past decade. Available data suggests strongly that the rules have also played a part in quite considerable changes to the nature and balance of food and soft drink advertising children see on TV.

### 43. ASA casework analysis

Since the present version of the BCAP Code was introduced in 2010, the ASA has assessed 15 cases<sup>13</sup> involving TV advertising under the food and soft drink advertising rules. Nine of these were considered under BCAP's dedicated HFSS restrictions; eight were assessed by the ASA and deemed not to require investigation or further regulatory action.

The only formal ruling since 2010, [Kellogg Marketing and Sales Company \(UK\) Ltd](#), involved consideration of whether a brand character associated with HFSS products in the past which was then used in an ad for a non-HFSS product was likely to have the effect of promoting the older, HFSS products. The ruling, from 2018, was made using the revised brand advertising guidance (see section 19 above for details). The ASA was satisfied that the strong focus on the non-HFSS product being advertised was enough to ensure it was clear that the product advertised was a non-HFSS product, which was, as such, not subject to BCAP's HFSS restrictions (section 47 below includes more detail on the ASA's approach to the application of the HFSS rules to the use of branding in non-broadcast casework).

The ASA has also taken informal action in two cases involving BCAP's rules on nutrition and health claims involving children. In such cases, the advertisers agreed to change or withdraw an ad to address a compliance issue.

Compliance with the HFSS and wider food and soft drink provisions of the BCAP Code is exceptionally high. To put it into context, in 2018:

- the ASA assessed some 5,748 cases involving TV advertising of any kind; and
- For all the media covered by both Codes, food and soft drink-related cases numbered 1,678 in total.

Cases related to children and food and soft drink advertising are therefore a small part of the ASA's work. The vast majority of food and soft drink cases relate to general consumer protection issues and the use of nutrition and health claims. This

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<sup>13</sup> A 'case' is a regulatory enquiry involving an ad or series of related ads in a campaign; these often involve multiple media types and can span both the CAP and BCAP Codes. It can involve one or more issues and Code rules depending on the potential problems with the ad(s) in question. A case can be based on a single complaint or several. Figures quoted here are based on ASA casework data up to 30 April 2019, but excluding cases ongoing at that time.

suggests that compliance rates are extremely high. This is likely to be driven, quite significantly, by the requirement for broadcasters to pre-clear advertising before it is broadcast.

#### 44. Wider impact of the TV rules

Analysis of compliance insights should be considered not just in terms of the ads ruled against, but also the wider effects of decisions to uphold complaints, for example by creating precedents to influence subsequent pre-clearance decisions or promoting better advertising practice at the creative stage.

As noted in section 29 above, Ofcom's review of the impact of the rules in 2010 concluded that they had met their regulatory objectives. Exposure had declined and the nature of TV food advertising had changed with fewer licensed characters and celebrities used in ads and a shift in the balance toward children seeing comparatively more non-HFSS advertising.

The Government's consultation updates this picture citing other exposure studies over the past decade, including government's work to support the consultation process<sup>14</sup>. This suggests that trends have continued downwards, with a decrease in children's exposure to TV HFSS advertising in 2017 by around 70% since 2005.

Alongside this, in February 2019, the ASA published a report, [\*Children's Exposure to Age-Restricted TV Ads\*](#), that sought to examine the levels of children's exposure to age-restricted TV ads – namely TV ads for alcohol, gambling and HFSS products – between 2008 and 2017. The report also considered children's exposure levels to those TV ads in the context of increasing use of online media in recent years, which is likely to be a significant driver behind the decline in children's exposure to TV ads in general. For children's exposure to HFSS ads on TV, the report focussed on data covering 2016 and 2017<sup>15</sup>.

In the wider context, children's exposure to all TV ads decreased by 26.6% between 2008 and 2017, from an average of 219.5 ads per week in 2008 to 161.2 ads per week in 2017. By comparison, children's exposure to all food and soft drink advertising on TV – including ads for both HFSS and non-HFSS food and soft drink products – decreased by 46.4% from an average of 35.5 ads per week in 2008 to 19 ads per week in 2017.

Children's exposure to all TV ads reduced by 29.7% from a peak of 229.3 ads per week in 2013 to a low of 161.2 ads in 2017. Over the same period, children's exposure to TV ads for all food and soft drinks products reduced by 45.5%, from an average of 35 ads per week in 2013 to 19 ads per week in 2017. This suggests that the decline in children's exposure to all TV ads might account for just over three-fifths of the reduction in children's exposure to all TV ads for food and soft drink.

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<sup>14</sup> Cited in Impact Assessment paragraphs 81-82.

<sup>15</sup> At present, commercial databases that produce TV ad impact data do not differentiate HFSS product ads from ads for non-HFSS food and drinks. To generate this data to support the analysis within the report, the ASA commissioned an independent BARB research bureau in developing a suitable methodology to verify existing BARB data and to generate a reliable dataset for analysis; its methodology is available in an annex to the report.

In relation to HFSS TV ads, children saw an average of 12.4 TV ads for HFSS products per week in 2016. In 2017, children saw, on average, 9.6 HFSS TV ads per week, which constituted a reduction of 22.9% in exposure from 2016. Over the same period between 2016 and 2017, children's exposure to all TV ads reduced by 15.6% from an average of 190.9 ads per week to 161.2 ads per week. This suggests that the decline in children's exposure to all TV ads might account for about two-thirds of the reduction in children's exposure to HFSS ads in TV over this two-year period.

Looking at the relative proportions of ads for HFSS products and ads for non-HFSS food and drink products seen by children, in 2016, they saw more HFSS product ads (an average of 12.4 ads per week) than non-HFSS food and drink product ads (11.1 ads per week). In 2017, the gap in exposure to the two types of ads narrowed; children saw approximately the same amount of HFSS product ads (9.6 ads per week) as ads for non-HFSS food and drink product ads (9.4 ads per week).

Given that the relevant scheduling rules were designed to direct HFSS product ads away from children's programming on TV, the report also looked at children's exposure to TV ads for HFSS products, relative to adults. In 2016, children's exposure to TV ads for HFSS products, relative to adults', was 29.6% in 2016 and 25.7% in 2017. This means that in 2016, children saw, on average about one HFSS product ad on TV for every three or four seen by adults, and in 2017, they saw on average around one HFSS product ad on TV for every four seen by adults. The report also found that in 2016, HFSS product ads made up 6.5% of all TV ads seen by children and 6% in 2017.

As the BCAP scheduling rules have not changed over the years covered by the report, other factors, such as changes in marketing spend and behaviour, are likely to account for the decline in children's exposure to those ads. The scheduling rules continue to help limit children's exposure to the extent that they ban those ads from appearing in significant parts of the broadcast schedule, in or adjacent to programmes of particular appeal to children.



## F – CAP enforcement

### 45. Overview

The CAP HFSS rules have only been in effect since July 2017. There is therefore a more limited basis upon which to make an assessment of their impact. However, insights from ASA casework analysis along with compliance and monitoring activities – including avatar-based research into online ad targeting – suggest compliance rates are generally high. Although more than in broadcast, there have been relatively few cases, and in a significant number of those, the ad or ads in question were found not to breach the CAP HFSS rules.

Although online media measurement is subject to greater uncertainties than TV, further insights from the consultation’s modelling and the ASA’s compliance and monitoring activities suggest that the rules are playing a positive part in ensuring online exposure to HFSS advertising is appropriately limited.

### 46. ASA casework analysis (prior to the introduction of the HFSS rules)

CAP has long had content rules regulating food and soft drink advertising; prior to the introduction of the dedicated HFSS rules they applied to all such advertising (see section 38 above). An analysis of this ASA casework provides useful context for evaluating the present rules.

Between the introduction of the present version of the CAP Code in 2010 and the addition of dedicated HFSS rules in July 2017, the ASA assessed a total of 32 cases<sup>16</sup> involving food and soft drink advertising and children; several related to online marketing communications.

30 cases involved assessment under rule 15.11 (condoning or encouraging poor nutritional habits or an unhealthy lifestyle). The ASA investigated 12 of these cases formally leading to published rulings of which two recorded breaches of the rule<sup>17</sup>:

- In [Swizzels Matlow Ltd](#), the ASA found an advergame in breach of rule 15.11 because it condoned excessive consumption while hiding the fact from parents.
- In [Nestlé UK Ltd](#), the ASA ruled the claim, “For a great start to the day”, breached rule 15.11 as it was likely to be interpreted as meaning the product was suitable for regular breakfast consumption when the product contained significant amounts of sugar.

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<sup>16</sup> A ‘case’ is a regulatory enquiry involving an ad or series of related ads in a campaign; these often involve multiple media types and can span both the CAP and BCAP Codes. It can involve one or more issues and Code rules depending on the potential problems with the ad(s) in question. A case can be based on a single complaint or several. Figures quoted here are based on ASA casework data up to 30 April 2019, but excluding cases ongoing at that time.

<sup>17</sup> A third formal investigation under rule 15.11, [Weetabix Ltd](#), found no breaches of the food rules, but did record a breach of rules in section 5 regarding direct exhortations.

Of the same group of 12 formally investigated cases, four<sup>18</sup> involved additional consideration under rules controlling the use of promotional offers, licensed characters and/or irresponsible marketing techniques; one was found in breach under these rules. In [Swizzels Matlow Ltd](#), alongside the finding summarised above, the ASA ruled against the use of a licensed character on a marketer's website targeted at pre- and primary school children under rule 15.15.

Given the widespread reach and volume of such advertising, this provides some indication of longer-term levels of compliance. There were relatively few cases and even fewer instances of non-compliance.

#### 47. ASA casework analysis (following the introduction of the HFSS rules)

Following the introduction of the dedicated HFSS rules in July 2017, the ASA has assessed 34 cases<sup>19</sup> involving the food and soft drink advertising rules. Of these, 31 were assessed against the new CAP HFSS rules; all the cases involved assessment under rule 15.18 (placement and targeting) (see below for details of cases involving the promotions and characters and celebrities rules). The remaining three cases involved rules 15.11 (condoning or encouraging poor nutritional habits or an unhealthy lifestyle) and/or 15.12 (disparaging good dietary practice) with informal action taken in two cases.

The ASA carried out 11 formal investigations into online media, of which five cases resulted in rulings that recorded breaches of the Code. There were five further formal investigations concerning other non-broadcast media<sup>20</sup>.

The 11 rulings cover a range of online media scenarios from ad placement around contextually targeted content to the use of interest-based targeting in platforms like social media. They provide a strong indication of where the ASA draws the line on placement and targeting issues.

- **Placement in children's media** – Rule 15.18 prohibits placement of marketing communications for HFSS products in children's media.
  - [Mondelez UK Ltd \(i\)](#) involved a downloadable activity pack and a story book, which included product branding. Although the website on which they were hosted was directed strongly at adults and the ASA noted the likelihood that parents would participate in the activities with their children, they breached the Code because the ASA considered both were specifically created as content for children under 16 years of age and it was clear that they would be given to children to use.
  - In [Mondelez UK Ltd \(ii\)](#), a website hosted downloadable materials (a comic book and audio book) directed at children; the latter were found

<sup>18</sup> The other investigated cases were: [Nestlé UK Ltd](#) (finding a breach of only rule 15.11), [Weetabix Ltd](#) (finding a breach of rules in section 5 regarding direct exhortations) and [Beverage Services Ltd](#) (no breaches were found).

<sup>19</sup> Figures quoted here are based on ASA casework data up to 30 April 2019, but exclude then ongoing cases.

<sup>20</sup> [Kentucky Fried Chicken \(Great Britain\) Ltd](#), [McDonald's Restaurants Ltd \(iii\)](#) and [Burger King Ltd](#) found breaches of rule 15.18 in relation to outdoor advertising. [McDonald's Restaurants Ltd \(ii\)](#), relating to a promotion on a bus ticket, and [Subway Realty Ltd](#), relating to an outdoor advertisement, were not found in breach.

by the ASA to be directed at children for similar reasons to the case immediately above. In this instance, the ASA also ruled that the website breached rule 15.18 because some of the content was designed to be engaged with by children; adults were therefore considered likely to be visiting the website to enable their children to engage with it.

- In [Ferrero UK Ltd \(i\)](#), involved a website, an app and a YouTube channel<sup>21</sup>. The ASA acknowledged that children might engage with the various activities in the presence, or under the supervision, of adults, but the content of the website, app and YouTube channel was specifically created as content for children under 16 years of age and would be primarily interacted with by children. They were therefore directed at children and in breach of rule 15.18.
- **25% audience threshold** – For advertising targeted based on the composition of the audience of media or a piece of content, advertisers must demonstrate the likely make-up of the audience and that under-16s are likely to comprise less than 25%.
  - In [Swizzels Matlow Ltd](#), the ASA ruled that an advergame breached rule 15.18. Although it was not specifically for children, it was likely to be of considerable appeal to them. The ASA was not satisfied that the advertiser had demonstrated the child audience was less than 25%. As part of the decision, self-declaration age-gating was not considered sufficient to comply with the Code.
  - In [Ferrero UK Ltd \(ii\)](#), the ASA found paid-for influencer posts appearing on Instagram, YouTube and Twitter complied with rule 15.18, because the advertisers were able to demonstrate that the respective child audiences were unlikely to be greater than 25%. Although comprehensive data was not available owing to non-logged-in viewers accessing content, the ASA noted data on the composition of the influencers' subscriber bases and the demographics of the platforms in general in reaching its finding.
  - In [Mondelez UK Ltd \(ii\)](#), alongside the ads found in breach (as summarised above), were a promotions page of a website and two YouTube video ads, which were not found in breach. The promotions page was directed at adults through its tone (it featured instructional information on how to enter the promotion) and only over-18s were allowed to enter the promotions. The ASA noted the YouTube ads appeared on the advertiser's own channel which had an under-18 subscriber base of less than 25%. The ASA ruled that, although comprehensive data was not available for the YouTube videos, the nature of the channel's content did not lead it to consider there a significant likelihood that non-logged in users would differ significantly in their demographic profile from logged in subscribers.

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<sup>21</sup> Several other ads in the campaign were not found in breach of rule 15.18, see below.

- In [Perfetti Van Melle UK Ltd](#), the ASA found an advertiser's own website featuring HFSS product ads did not breach rule 15.18. Although comprehensive data was not available, the ASA noted website analytics and data related to the advertiser's wider online presence and concluded the website's child audience was unlikely to be greater than 25%. The ruling also assessed several Facebook posts and a YouTube video, but did not find them in breach of rule 15.18 because the advertisers had explicitly used non-HFSS products from its range. As ads for non-HFSS products, they were not within scope of the rule.
- **Use of targeting tools** – Marketers must take all reasonable steps to use the data available to include or exclude individuals on the basis of their age or other relevant criteria. No under-16s or individuals who, due to their online behaviour, are likely to be under 16 should be targeted directly with HFSS advertising.
  - In [Cloetta UK Ltd](#), the ASA found a series of social media posts breached rule 15.18 because the advertisers had not used the tools available to exclude children. The ASA noted that Facebook's targeting tools could prevent posts from being seen by any users registered as under 16 (including if the post had been liked or shared by users registered as 16 or over) and allowed targeting using interest-based factors to address the potential for under-16s to be registered with false ages.
  - In [Walkers Snacks Ltd \(i\)](#), the ASA ruled that an Instagram post for HFSS and alcohol products had been appropriately targeted. Although the marketer used interest-based factors to target the post, the ASA considered these were too broad and noted interest-based factors had not been used to specifically exclude those likely to be children. However, the targeting was compliant because, additionally, the marketer had only targeted users registered as 18 and over and who also had either a store loyalty card or a Visa card which required them to be aged 18 or older.
  - In [Walkers Snacks Ltd \(ii\)](#), a child had been served an HFSS ad on YouTube using a device used by both adults and children, but the ASA ruled that it did not breach rule 15.18. It considered YouTube was a medium primarily used by those aged 18 and over and Walkers Snacks had targeted the ad at users with a self-reported or inferred age of 18 and over, and they had used additional factors including significant interest-based targeting to further exclude under-16s from the target audience. The advertisers were deemed to have taken all reasonable steps to target the ad appropriately.

The rulings also demonstrate the ASA's stance on the kinds of branding that – even without direct product references – can bring an advertisement within scope of the HFSS restrictions.

- In [Ferrero UK Ltd \(i\)](#), before ruling on compliance with rule 15.18 (see above), the ASA considered the website, app and YouTube channel were ads for HFSS products even though those products were not featured. The ASA noted, in particular, the commonalities between the brand logos featured and those used on the advertiser's HFSS products.
- In [McDonald's Restaurants Ltd \(i\)](#), the ASA considered that an ad deemed likely to promote a meal bundle, which involved several HFSS products within its potential combinations, would have the effect of promoting an HFSS product. As only non-HFSS options were shown and because the advertiser demonstrated that the majority of each of the components of the bundle were non-HFSS (which was also reflected in sales data), the ASA considered the ad was unlikely to promote an HFSS product and was therefore not subject to the HFSS ad restrictions.

Of the 31 cases assessed under 15.18, six were assessed additionally under other HFSS rules; rule 15.14 (promotions) and/or 15.15 (licensed characters and celebrities). This resulted in five of the 16 formal rulings covering both issues of HFSS placement (under rule 15.18) and ad content. Only one case resulted in breaches of rules rule 15.14 (promotions) and 15.15 (licensed characters and celebrities).

- Rule 15.14 prohibits use of promotional offers in ads targeted through their content directly at pre-school or primary school children.
  - In [Ferrero UK Ltd \(i\)](#), the ASA found the inclusion of promotional offers on a website directed at pre- or primary school children to breach the Code.
  - In [Mondelez UK Ltd \(ii\)](#), a promotional offer on a webpage was not found to breach the Code because imagery and the competition itself were appealing to adults as well as children, and the wording and tone used were primarily directed at adults rather than at pre- or primary school children.
- Rule 15.15 prohibits the use of licensed characters or celebrities popular with children in ads targeted through their content directly at pre-school or primary school children.
  - In [Ferrero UK Ltd \(i\)](#), the ASA found the inclusion of licensed characters on a website and app directed at pre- or primary school children to breach the Code.
  - In [Perfetti Van Melle UK Ltd](#), [McDonald's Restaurants Ltd \(i\)](#) and [Mondelez UK Ltd \(iii\)](#), the ASA did not find breaches of rule 15.15.

There were an additional 6 cases where the ASA took informal action to resolve compliance issues related to rules 15.18.

Compared to the period prior to the introduction of the HFSS rules, this represents an increase in the number of cases per year. However, this is likely to be due, in the main, to the introduction of quite significant new restrictions. Firstly, marketers must adapt their compliance approach. This is especially the case given the very broad range of media types covered by the CAP Code and how compliance approaches must be adapted to the circumstances of each. Secondly, the ASA has pursued formal investigations to establish precedent on the interpretation of the new rules. Overall, however, it is still quite a small number given the reach and volume of food and soft drink advertising across non-broadcast channels.

Notwithstanding the rulings summarised here and the findings of the ASA's compliance work summarised in section 48 below, compliance with the HFSS and wider food and soft drink provisions of the CAP Code is generally high. In 2018, the ASA assessed a total of 14,257 cases related to online media. As noted above, for all the media covered by both Codes, food and soft drink-related cases numbered 1,678 in total with general consumer issues – rather than those related to children – accounting for the vast majority of the ASA's work.

It is also of note that a significant proportion of these cases originated in complaints from organisations involved in campaigning on issues related to children's diet. The involvement of such stakeholders provides valuable extra assistance in detecting potential non-compliance owing to their detailed knowledge of the requirements of the HFSS rules.

In terms of precedents, the rulings show how the ASA has taken a firm stance on placement in children's media; how it requires advertisers targeting audiences or individuals in other media to positively demonstrate that they have taken reasonable steps to comply with the rules; and that the HFSS restrictions apply more broadly than simple product references, capturing branding likely to have a similar promotional effect.

#### **48. Compliance and monitoring activities**

In November and December 2018, the ASA conducted two pieces of proactive work relating to online advertising of HFSS products:

- The first involved research using automated data-capture technology – “Avatars” – to collect information on online display advertising.
- The second was a brand-controlled online media monitoring exercise in open access social media and websites.

The [ASA Monitoring Report on Online HFSS Ads](#) was published earlier in June.

The avatar research was commissioned to monitor compliance with the CAP Code rules on ads for HFSS products, in particular the new online ad placement rule introduced in July 2017. It was not intended to provide a representative sample of audience exposure to HFSS ads.

The Avatars mimicked the online profiles of different age groups (a child, a teenager, an adult, a child and an adult sharing a device etc.) and made 196,000 visits to 210 websites, 87 YouTube channels, and related pages and videos during a two-week period. The websites and YouTube channels represented a range of interests with some likely to be of particular interest to children, some likely to be of interest to general audiences, and some primarily of interest to adults. The research collected information on over 95,000 ads served to the seven Avatars, 2,312 of which (2.42% of the total) were for HFSS products.

The research did not find any clear evidence of HFSS ads being inappropriately targeted at the Child Avatars – the Avatars mimicking the characteristics of children in fact were served fewer HFSS ads than the Avatars mimicking adults or those with no browsing history. None of the HFSS ads captured during the research contained content intended for children or featuring celebrities or licensed characters popular with children. More than two-thirds of the HFSS ads served to Child Avatars were for products unlikely to appeal directly to children – supermarkets, cheese and condiments.

The research found that the 210 websites included in the research had a high level of compliance with the HFSS placement rule. 26 of the 39 websites clearly intended for children did not serve a single HFSS ad during the research. Only 43 ads for HFSS products appeared on the remaining 13 websites clearly intended for children – 0.50% of all ads served on those sites.

However, the research did identify problem patterns in how HFSS ads were served on YouTube. 490 HFSS ads were served to non-logged-in users across 55 YouTube videos clearly intended for children – 4.05% of all ads recorded on children's YouTube channels during the research.

In response to these findings, we contacted eight major brands which served the most HFSS ads on children's YouTube channels. All eight brands agreed to amend their ad serving processes to improve compliance with the CAP Code and prevent their ads appearing on the identified channels.

The research findings and information shared by the brands allowed the ASA to work with YouTube to support developments in their ad serving mechanisms. YouTube is continuing to develop these mechanisms but is confident that their improvements implemented since the Avatar research was conducted will significantly reduce the number of HFSS ads appearing alongside videos clearly intended for children.

Concurrently with the Avatar research, the ASA conducted manual-data-capture monitoring of the non-paid-for online content of 50 major brands associated with HFSS products. This involved assessing the content of advertisers' public-facing brand websites and content visible to non-logged-in users on major social media platforms – Twitter, Facebook, Instagram, and YouTube.

The monitoring exercise found no clearly problematic content involving celebrities or licensed characters popular with children. Just one of the 50 brands was found to have non-paid-for online advertising content targeted at children which was likely to breach the CAP Code. The content, which appeared on the brand's website,

included an online advergame and downloadable activities featuring branding for an HFSS product. The ASA launched a proactive investigation and contacted the advertiser in question who promptly removed the problem content.

#### **49. Wider impact of the non-broadcast rules online**

Alongside the high levels of compliance, it is possible to make some assessment of the likely wider impact of CAP's rules. However, there are significant difficulties in measuring audiences for advertising online in general and on particular online media types. Attempts at quantification should be received with appropriate caution.

Nevertheless, data generated for Government's consultation suggests that there were some 0.73bn child HFSS impacts in 2017<sup>22</sup>. This is markedly less than the level of children's exposure in TV. This is particularly important as one of the main concerns about HFSS advertising following the introduction of a tougher framework for TV in 2007 and the shifts in children's media habits toward online has been the potential for quite significant exposure to occur in online spaces. Although the data must be treated with appropriate caution, there is a reasonably strong suggestion that that is not happening. It is important to also note that the rules have only been in place for a relatively short space of time; indeed, they came into effect half way through the year assessed by the Consultation's data modelling.

While the ASA's Avatar and monitoring projects cannot be used to provide a quantitative assessment of the extent of HFSS advertising or children's exposure to it, they do provide insights into the effectiveness of targeting mechanisms in certain online media. The Avatar study, while not intended to constitute a representative sample, did involve a considerable number of websites. It yielded relatively few instances of problematic media choice for HFSS ads, however. When combined with insights from ASA casework on targeting, this provides encouragement to the view that targeting mechanisms, such as the use of interest-based factors, can be used effectively to limit children's exposure to HFSS advertising.

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<sup>22</sup> Noting Impact Assessment paragraph 85.