

Briefing on new CAP non-broadcast rules restricting junk food marketing to children

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Summary:

"After years of our campaigning on this issue, Children's Food Campaign welcomes these long-awaited new rules, which should hopefully stop some of the more blatant forms of advertising junk food directly to children. But we have concerns about exactly how the rules will work in practice, especially online. We are also disappointed that some criteria may still mean children remain exposed to a significant level of junk food marketing, particularly on websites and social media. In addition, packaging, in-store promotion and sponsorship deals remain outside of the rules."

"Past experience suggests that we will have a busy time ahead keeping a close eye on advertisers; submitting complaints; and challenging the Advertising Standards Authority to clarify the grey areas and close down the loopholes. We know sweet and confectionery brands are among those most needing to step up."

To coincide with the introduction of the new rules, Children's Food Campaign is:

- 1) Launching '[Operation Eagle Eye](#)' - encouraging people to help us keep a close eye on how food and soft drink companies are advertising their products; and submitting complaints to the ASA about specific ads where appropriate.
- 2) Issuing a [10 point checklist to advertisers](#) to encourage best practice and help them meet the spirit and not just the letter of the new rules.
- 3) Asking the ASA to conduct **transparent monitoring and evaluation** of the impact of the new rules, and publish those findings, so that the rules can be properly assessed and politicians and the public can decide whether further interventions are necessary.
- 4) Continuing to campaign to see those **marketing techniques not currently covered by the new rules** – including packaging, in-store promotion, sponsorship, and in-school marketing – all brought under the same system.
- 5) Ensuring that – via initiatives such as our new [Parents' Jury](#) – children's and parents' voices continue to be heard in the policy debate.

What are the new rules?

The Committee of Advertising Practice (CAP) has introduced new rules banning the advertising of high fat, salt or sugar (HFSS) food or drink products in traditional and online children's media, from magazines and cinema, to billboards near schools, to social media, apps and advergames.

>>>> The rules apply to media targeted at under-16s.

>>>> The rules came into effect on 1 July 2017.

>>>> The rules do not include TV – that is governed by a separate Code.

The new rules mean that:

- **Ads that directly or indirectly promote an HFSS product cannot appear in children's media.**
- **Ads for HFSS products cannot appear in other media where children make up over 25% of the audience.**
- **Ads for HFSS products will not be allowed to use promotions, licensed characters and celebrities popular with children;** though advertisers may now use those techniques to better promote healthier options.
- Ads which feature brands and branding associated with HFSS products may not be allowed, even if they don't actually feature HFSS products.

Examples of advertising that may now longer be allowed

See the separate briefing / appendix which gives examples; including websites, advergames, apps and social media messages which Children's Food Campaign found were allowed to be targeted at children under the previous rules, but which likely would not be allowed now.

What isn't included in the new rules?

- Packaging, in-store marketing, sponsorship and educational materials are not covered by the rules; and weren't covered before either.
- There is no blanket ban on HFSS ads being shown before 'U' or 'PG' films – the ASA say they will assess on a film by film basis if they receive any complaints.

What media is subject to the new rules?

- **“Children’s media”** – that which is usually explicitly directed at children (a website of children’s games or a children’s interest magazine) or have content that is strongly orientated towards them. This is particularly the case for younger children.
- The rules also apply to **media not explicitly directed at children but where children make up more than 25% of the audience.**

Where audience data is not available, the ASA relies on other factors to assess whether media is directed at children:

- the steps taken by advertisers to target or exclude specific audience groups from a particular advertising campaign using account or other data available.
- an **assessment of the media content** – including themes, imagery and the like – and the context in which it appeared.

How will the new rules be implemented?

The rules operate on a reactive basis: until a complaint is submitted to the Advertising Standards Authority, the onus is on the advertiser to follow the rules without any oversight. This is unlike broadcast, where the ad and its placement have to be pre-approved.

However, if a complaint is submitted, the ASA will expect advertisers to make a case that they’ve targeted their ad responsibly and stuck to the rules. If an advertiser can’t be certain about the audience of a particular platform or media, the ASA advises them to take a cautionary approach.

What concerns are there over the implementation of the new rules?

The rules may be hard to monitor and enforce, especially advertising online and through social media. Getting hold of accurate data (esp re: audience share) is difficult and there is a lack of industry-wide recognised standards or neutral sources.

The ASA does not produce a list (even for guidance) of magazines, websites etc which it considers to be “children’s media” and thus where HFSS ads would not be able to be displayed. So this will have to be worked out on a case-by-case basis.

It all hinges on the evidence advertisers present about the audience share (whether that was over 25% children or not), their targeting criteria and the ad content itself.

But age identification online is often tricky. And we don’t yet know if, for instance, the wording / content of the ad could be targeting children, but the audience share is under 25%, which would take precedence in the ASA’s adjudication.

In addition, with marketing campaigns using YouTubers and other influencers, there will be a challenge in determining whether those stars have that particular appeal to under 16s. And in knowing whether the places where the ad appears have a >25% audience share and/or has the placement been targeted at under 16s.

The ASA's advice in such circumstances is to "make a complaint" and it will be for the advertiser to prove they can answer in negative on their ad particularly appealing to, or targeting, children.

Ultimately then, only submitting a complaint about an ad and the subsequent ASA investigation and ruling provide a definitive answer on whether something is permissible or not. That is how the ASA works, and means Children's Food Campaign will be kept busy submitting complaints – hence our Operation Eagle Eye.

What is an HFSS product?

Products high in fat, salt or sugar are identified using nutrient profiling.

The new ad rules rely on the **Department of Health nutrient profiling model**, which compares energy, saturated fat, total sugar and sodium against fruit, vegetables and nut content, fibre and protein.

When the scores are added up foods, scoring 4 or more points, and drinks, scoring 1 or more points, are classified as 'less healthy' / HFSS and are subject to advertising restrictions.

There is currently a PHE review of the nutrient profiling model, to update it to reflect the latest official advice on sugar reduction & increased fibre intake in people's diets.

How have the rules on brand advertising changed?

The new rules bring in some welcome tightening of the way brand advertising is treated. The aim is to ensure that new rules are effective in protecting children where there's a reasonable likelihood an HFSS product is being promoted. The guidance takes a pretty broad view on what branding can be; it's not just company logos. It applies to anything associated with individual products, ranges, companies or corporate entities.

If advertiser features an identifiable HFSS product, the ASA is highly likely to apply the restrictions. Similarly, if the ad features product branding that is synonymous with an HFSS product, but not the product itself, the ASA is highly likely to apply the restrictions.

However, the new brand advertising rules don't extend to the packaging. And the big test on compliance and on how the rules are interpreted will come where brand characters and branding associated traditionally with HFSS products is used on non-HFSS products within that company's range.

Why are the new rules necessary?

World Health Organisation's recent evidence review concluded that:

“A robust evidence base accumulated between 2003 and 2013 demonstrated how the extensive and persistent exposure to the powerful marketing of unhealthy food and drink products could affect the preferences and purchasing requests of children. Rigorous reviews have documented how often the sophisticated and integrated marketing communications of the food and drink industries continue to influence the dietary behaviour of young people and contribute to energy-dense and nutrient-poor diets, increased risks of unhealthy weight gain and negative health outcomes.”

(Bulletin of the World Health Organisation 2016; 94:540-548)

Public Health England has recommended that action is needed to:

“significantly reduce opportunities to market and advertise high sugar food and drink products to children and adults across all media including digital platforms and through sponsorship”. (PHE, Sugar Reduction: from evidence to action, 2015)

What has the situation been like until now?

Up until now the Committee of Advertising Practice non-broadcast rules have failed to adequately reduce the “appeal to and the exposure of children to ads for less healthy foods”.

The findings of a major study Children's Food Campaign conducted into the existing rules in 2013 found that:

- The rules have been **vague, inconsistently applied** and didn't distinguish between healthy and unhealthy products.
- **Loopholes** – HFSS TV ads shown online; advergames; misleading health claims; child-friendly brand characters.
- Failure to cover a number of common **marketing techniques** that are targeted at children – eg. sponsorship deals, product packaging, in-school marketing, and in-store placement of products.

Through the Looking Glass

A review of the topsy turvy world of the regulations that are supposed to (but don't) protect children from online marketing of junk food



Children's Food Campaign

What has Children’s Food Campaign been calling for?

The recommendations from our 2013 report, reinforced by our experiences and further research since then, are:

The rules should be **harmonised** across all forms of media (including in cinemas, on posters, in print, online and advergimes), using the current restrictions on broadcast advertising of HFSS products to children under 16 as a starting point, but going further.

The new rules should include:

- a **definition of advertising** that is widened to include all forms of commercially-sourced messages.
- a remit which includes the **labelling and packaging** of food and drink.
- the tightening of restrictions on the **techniques** that can be used to engage with children.
- a “**particular appeal**” **test** which extends beyond child-directed advertising to include advertising likely to be seen by children under 18, and focuses on the probability that a child may see the messaging.
- transparent **monitoring** and effective **sanctions** for transgressions.

This was the basis of our consultation response to CAP in July 2016.

Promoting best practice: our 10-point check list for advertisers

Based on the text of past rulings by the Advertising Standards Authority, Children’s Food Campaign has drawn up a stronger and more transparent definition of what constitutes advertising which has ‘particular appeal’ to children. We submitted this as an appendix to our consultation response to the Committee of Advertising Practice in July 2016.

Now we are taking the top 10 points and reproducing them as a checklist for advertisers who want to adhere to better practice and meet the spirit and not just the letter of the new rules.

We encourage advertisers promoting HFSS products or brands associated with HFSS products to avoid using any of these techniques:

- 1) Tie-ins with films and TV programmes popular with children
- 2) Cartoons and cartoon-like imagery that appeals to children
- 3) Child-friendly characters
- 4) Colourful and exaggerated style that appeals to children
- 5) Images of children
- 6) Characters which children aspire to be
- 7) Music / artists popular with children
- 8) Simple game play, or games with names appealing to children
- 9) Downloadable games / ringtones / screensavers
- 10) ‘Childlike’ or child-appealing ad wording

Operation Eagle Eye

The Advertising Standards Authority has said “we want to receive complaints ... bring them on!”

Why? As that is how they work. They need complaints to help clarify the ‘grey areas’ and make precedents for industry to follow.

So

Children’s Food Campaign has launched ‘Operation Eagle Eye’ - to keep a close eye on ads; and swoop down and take action where brands are flouting the letter or spirit of the rules.

We will be:

- monitoring and gathering evidence
- submitting complaints (& encouraging others to do so)
- asking people to send us examples they come across
- compiling dossiers for politicians, and also to feed into the ASA’s own monitoring and evaluation process, which they say will begin later this year.

There are two ways people can help with Operation Eagle Eye:

- 1) **Send us any examples** of junk food advertising appealing to children which you or children see.

>>> email (malcolm@sustainweb.org) or tweet us #operationeagleeye

- 2) **Join our Parents’ Jury** – our exciting new initiative to involve parents and get their views heard more

>>> register your interest now, at www.sustainweb.org/parentsjury

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