

## **Consultation of the Committee on Advertising Practice (CAP) on restricting advertising of unhealthy food and soft drink products in non-broadcast media: joint response by World Cancer Research Fund International and World Cancer Research Fund UK**

22 July 2016

### **About World Cancer Research Fund International**

World Cancer Research Fund International leads and unifies a network of cancer prevention charities with a global reach. We are the world's leading authority on cancer prevention research related to diet, weight and physical activity. We work collaboratively with organisations around the world to encourage governments to implement policies to prevent cancer and other non-communicable diseases (NCDs).

We advocate for the wider implementation of more effective policies that enable people to follow our Cancer Prevention Recommendations<sup>1</sup>. The evidence shows that effective policies will reduce the chances of people developing cancer and other NCDs.

Our NOURISHING policy framework and accompanying database of food policies from around the world contains implemented policies which aim to promote healthy diets to reduce obesity and nutrition-related NCDs. Among the included policies are mandatory and voluntary policy actions to restrict food marketing to children (<http://www.wcrf.org/int/policy/nourishing-framework/restrict-food-marketing>).

More information on World Cancer Research Fund International can be found at <http://www.wcrf.org> and [www.wcrf.org/NOURISHING](http://www.wcrf.org/NOURISHING).

### **About World Cancer Research Fund UK**

World Cancer Research Fund UK belongs to the network of cancer prevention charities led by World Cancer Research Fund International.

For the past 25 years, World Cancer Research Fund has been the UK's leading charity dedicated to the prevention of cancer through diet, weight and physical activity. We fund research, provide health advice and deliver health information programmes<sup>2</sup> to empower people to follow our Cancer Prevention Recommendations<sup>1</sup> to reduce their risk of developing a preventable cancer.

Our analysis of global research shows that a third of the most common cancers are preventable through a healthy diet, maintaining a healthy weight and regular physical activity.

More information on World Cancer Research Fund UK can be found at <http://www.wcrf-uk.org/>.

### **Contact**

Please send any queries in relation to our consultation response, and updates on the consultation progress, to [policy@wcrf.org](mailto:policy@wcrf.org).

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<sup>1</sup> <http://www.wcrf.org/int/research-we-fund/our-cancer-prevention-recommendations>

<sup>2</sup> <http://www.wcrf-uk.org/uk/preventing-cancer>

## GENERAL POSITION

We welcome CAP's consultation in view of the Report of the World Health Organization's Commission on Ending Childhood Obesity (2016) and the forthcoming UK government's Childhood Obesity Strategy. CAP's role and its marketing regulations should be considered in the wider context of a societal response to alarming rates of childhood obesity and its consequences: currently one in five children in England are overweight or obese before they start primary school, and by the time they leave, this increases to almost one in three.<sup>3</sup> Obese children are more likely to be obese as adults, which in turn increases their risk of developing serious health conditions such as type 2 diabetes, cancers, stroke and cardiovascular diseases. These conditions have a devastating human impact and also place a huge financial burden on the NHS.

While we advocate for a comprehensive policy package with government involvement to tackle such a multi-faceted and complex issue as childhood obesity, we would like to stress the importance of marketing restrictions given the significant contribution of food marketing to the obesogenic environment children live in. A child's right to health should not be traded off against commercial freedoms to promote unhealthy food and drinks.

## KEY POINTS

- The definition of advertising is not sufficient. It should include all commercially-sourced marketing messages across all forms of media and platforms, wherever and whenever it is placed. In particular, an adequate definition should include celebrity-endorsement and sponsorship as well as brand advertising using brand equity characters, advergames, apps, logos, brand names and brand-related images in any media.
- Marketing rules should be harmonised across broadcast and non-broadcast media, and no exemptions should apply.
- Ideally, children under age 18 should be protected from all marketing communications promoting unhealthy foods and non-alcoholic beverages but, at a minimum, the age definition of "child" should be 16 and under.
- A "particular appeal" test should extend beyond child-directed advertising to include marketing messages *likely* to be seen by a significant number of children under 18 (ideally; otherwise 16), i.e. the focus should be the probability that a child may see the commercial messaging. Data used to determine the likelihood of a child seeing marketing communications on HFSS food and beverages should be collected and provided by an independent organisation.
- A more stringent nutrient profiling model that governs what can be advertised is necessary.
- Ideally, it should be the Government – for instance, through its Childhood Obesity Strategy – which sets ambitious policy goals to be met by the rules of the Committee of Advertising Practice and other relevant bodies/regulators. In addition, rules on food marketing should always seek to match international best practice, and adhere to World Health Organization recommendations<sup>4</sup>.
- A transparent monitoring process as well as effective sanctions for violations of the CAP rules are essential to enforce the rules.

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<sup>3</sup> [http://www.noo.org.uk/NOO\\_about\\_obesity/child\\_obesity](http://www.noo.org.uk/NOO_about_obesity/child_obesity)

<sup>4</sup> Set of recommendations on the marketing of foods and non-alcoholic beverages to children (resolution 63.14 of the 63rd World Health Assembly, May 2010).

## CONSULTATION QUESTIONS

### Question 1: Restrictions on HFSS product advertising

1.a *Should the CAP Code be updated to introduce tougher restrictions on the advertising of products high in fat, salt or sugar (HFSS)?*

**Yes.**

Children are constantly exposed to marketing of unhealthy food and beverages across all media. Integrated marketing communication of food and beverage companies greatly influence not only children's food preferences and choices,<sup>5 6</sup> but also the amount they eat,<sup>7</sup> thus contributing to a diet of nutrient-poor and energy-dense foods which increases their risk for overweight and obesity and related negative health outcomes. Additionally, the influence of marketing on children's dietary behavior makes it very difficult for their parents to navigate the task of teaching them healthy dietary habits.

Despite clear evidence of the harm of child-directed marketing of junk food, no company has a comprehensive policy on restricting marketing communications to children.<sup>5 6</sup> Hence, regulation to protect children from undue commercial interests through a regulator such as CAP is essential to guarantee children's right to health.

However, the current CAP rules are not effective in protecting children because they are vague, inconsistently applied and don't distinguish between healthy and unhealthy products. Loopholes exist which allow junk food marketing which would not be allowed on TV. In addition, the rules fail to cover a number of common marketing techniques targeting children, such as brand equity characters (e.g. the Nesquik rabbit or Ronald McDonald), sponsorship, advergames, apps, licensed characters, celebrity-endorsement (including using influencers such as musicians and bloggers to produce and distribute marketing content which often is not clearly labelled as advertising) and on-pack communications (e.g. featuring competitions and games).

Therefore, the current rules must be tightened.

1.b *Should CAP use the existing Broadcast Committee of Advertising Practice (BCAP) guidance on identifying brand advertising that promotes HFSS products to define advertising that is likely to promote an HFSS product for the purposes of new and amended rules?*

**No.**

The existing BCAP guidance is not strong enough because it does not include all forms of commercially-sourced messages, namely brand marketing, including brand names or brand-related images. This is worrying, given that many marketing messages aimed at children focus primarily on promoting a corporate brand or 'family' of products. This is particularly problematic when most products within that brand/range are – or are perceived as being – HFSS, and thus are not appropriate to be marketed to children.

Brand marketing is worrisome because evidence shows that children who recall branded unhealthy foods and drinks have a stronger preference for them than children who don't recognise brands.<sup>8</sup> Therefore, it is necessary to broaden the definition of advertising to be included in CAP to include all commercially-sourced messaging (brand names, logos or brand equity characters).

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<sup>5</sup> Kraak V. et al. *Progress achieved in restricting the marketing of high-fat, sugary and salty food and beverage products to children*, Bull World Health Organ 2016; 94:540-548.

<sup>6</sup> Cairns G. et al. *The extent, nature and effects of food promotion to children: a review of the evidence to December 2008*, Geneva 2009.

<sup>7</sup> Boyland E. et al. *Advertising as a cue to consume: a systematic review and meta-analysis of the effects of acute exposure to unhealthy food and nonalcoholic beverage advertising on intake in children and adults*, Am J Clin Nutr 2016;103(2):519-22.

<sup>8</sup> Kraak V. et al. *Progress achieved in restricting the marketing of high-fat, sugary and salty food and beverage products to children*, Bull World Health Organ 2016; 94:540-548.

## Question 2: Selecting a nutrient profile model

*Should the CAP Code adopt the Department of Health nutrient profiling model to identify HFSS products?*

**Yes.**

The Department of Health nutrient profiling model should be adopted to assess which food and drinks should not be marketed to children. Evidence shows that industry-developed nutrient profiles are significantly less effective than government-led nutrient profiling schemes.<sup>9</sup>

Public Health England has just started conducting a review of the current nutrient profile model for broadcast advertising, to check if it is still fulfilling its purpose and to incorporate new dietary recommendations on sugar reduction and fibre intake. Assuming that the result of the review is a strengthened model, then the revised model should be adopted for non-broadcast marketing, too. In the meantime, the current model should be adopted.

Ideally, the thresholds would be further strengthened such that diet soft drinks (low and zero calorie) couldn't be promoted.

## Question 3: Existing prohibitions on the use of promotions and licensed characters and celebrities

*There are existing rules in place relating to the creative content of food and soft drink advertising directed at children aged 11 and younger. Should these rules now be applied to advertising for HFSS products only?*

**No.**

Young children are particularly vulnerable to marketing: they are not able to distinguish between commercial messaging and factual information.<sup>10</sup> In addition, they form emotional bonds with brand equity characters, licensed characters and celebrities as if they were their friends which influences their food preferences and choices.<sup>11</sup> Therefore, no marketing of any sort should be directed at the age group of 11 and younger to avoid exploitation of younger children's credulity and particular vulnerability.

Furthermore, we are concerned that a distinction between HFSS and non-HFSS foods for marketing purposes would undermine the aim to protect children from any marketing of unhealthy food and beverages. Just like HFSS foods, non-HFSS products are often unhealthy. Non-HFSS products are classified as 'healthier' because their fat, sugar and salt content is below the thresholds which would make them a HFSS food or beverage. However, many of these non-HFSS products contain high levels of fat, sugar and salt and only qualify as non-HFSS because their fibre and protein content is positively taken into account. Even those products which qualify as non-HFSS without factoring in their positive fibre and protein content oftentimes contain an amount of fat, salt and sugar which we deem too high to be promoted to children through any medium.

In other words, many non-HFSS products are not healthy despite the classification as 'healthier' foods and beverages – they are just not as bad as HFSS products. Therefore, non-HFSS products should not be promoted using celebrities or licensed characters.

However, we recognise the potential for marketing to be used to promote healthy lifestyles. As such we welcome the possibility to exclude fruit and vegetable products from a marketing ban to young children under two conditions:

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<sup>9</sup> Brinsden H and Lobstein T. *Comparison of nutrient profiling schemes for restricting the marketing of food and drink to children*. *Pediatric Obesity* 2013;8:325-327.

<sup>10</sup> Gosliner W and Madsen KA. *Why licensed commercial characters should not be used to sell healthy products to children*. *Pediatrics* 2007;119:1255-1256.

<sup>11</sup> Bond BJ and Calvert SL. *A model and measure of U.S. parents' perceptions of young children's parasocial relationships*. *J Child Media* 2014;8:286-304.

1. the fruit and vegetable product has *no added sugar, fat or salt only*; and
2. the licensed characters and celebrities used are not identifiable with HFSS foods or non-HFSS ('healthier') foods and beverages.

To clarify the first condition, the rules should not be relaxed to allow marketing of any non-HFSS product because many of these non-HFSS foods and beverages still contain significant levels of sugar, salt and fat. The rules should *only* be relaxed for the *demonstrably healthiest* products, and not for 'healthier' products.

To clarify the second condition, the rules should not be relaxed even for fruit and vegetable products with no added sugar, fat or salt if the celebrity or licensed character used to promote these products can be associated with a corporate brand or product family of mostly HFSS foods and/or non-HFSS foods just below the threshold ('healthier' products).

Finally, we urge CAP to extend the restrictions on the use of media characters, mascots and celebrities to point-of-sale/purchase, packaging, in-store promotion, toy giveaways and competitions. The same should also apply to equity brand characters.

#### **Question 4: Introducing media placement restrictions**

*4.a Should CAP introduce a rule restricting the placement of HFSS product advertising?*

**Yes.**

The marketing environment has significantly changed since the advent of internet. Many children have unrestricted and unsupervised access to internet on computers, laptops, tablets and smart phones. In addition, they are exposed to advertisements in their physical environment (e.g. posters, print, cinema). Therefore, it is paramount that non-broadcast marketing contains rules on the placement of HFSS product advertising.

*4.b If a media placement restriction is introduced, should it cover media directed at or likely to appeal particularly to children: i) aged 11 or younger, or ii) aged 15 or younger?*

Ideally, the age definition should be in line with WHO recommendations and the UN Convention of the Rights of the Child. Both define a child as anyone under 18 years of age. Consequently, this should be the age definition used by CAP to protect all children in the best possible way.

However, we recognise that current BCAP rules define children as younger than 16 years of age. That should be the minimum age definition used by CAP to bring its rules in line with broadcast regulations. We note this option was not given in the consultation. We urge CAP to consider 16 and younger as the age definition, but out of the two options given, we support aged 15 and under as the absolute minimum.

There is ample evidence to rule out an age definition of 11 and under. Children aged 11 and above are substantially influenced by junk food marketing due to their greater independence and higher levels of media consumption.<sup>12</sup> In addition, newer forms of digital and social media food marketing practices are often difficult, even for children above 11, to recognise and resist.<sup>13 14</sup> This issue is compounded by the curation of marketing content through digital intermediaries like Google and YouTube. Some children perceive such curated marketing content as legitimising brands, and have increased trust in the content of branded websites accessed through the intermediaries' sites.<sup>15</sup>

<sup>12</sup> Ofcom. *Children and Parents: Media Use and Attitudes Report*. 2015.

<sup>13</sup> Institute for Policy Research, University of Bath. *Advergaming: it's not child's play*. 2014.

<sup>14</sup> Ofcom. *Children and Parents: Media Use and Attitudes Report*. 2015.

<sup>15</sup> Ofcom. *Children and Parents: Media Use and Attitudes Report*. 2015.

## **Question 5: Defining the audience**

*It is often straight-forward to identify media targeted at children. Where media has a broader audience, CAP uses a “particular appeal” test – where more than 25% of the audience are understood to be of a particular age or younger – to identify media that should not carry advertising for certain products media. Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?*

**No.**

The 25% measure provides insufficient protection to children as it is based on percentage, rather than volume of children in the audience. A 25% threshold would still allow huge numbers of children to be exposed to marketing of HFSS foods. In addition, a 25% measure would mean that media universally popular with both adults and children would not meet the threshold.

We also believe that the threshold would be almost impossible to implement and monitor transparently due to lack of robust and reliable data available on the audience consuming digital media. There are no similar data sets for non-broadcast media as there are for broadcast media. The data that does exist on audience breakdown online is often partial, proprietary and inaccurate when it comes to age profiles. For example a child may be watching online videos signed into their parent’s YouTube account which would identify them as an adult and serve advertising content accordingly. Similarly, a child may lie about his/her age when creating a Facebook account, consequently seeing advertising directed at an older audience than the child’s real age group. We are also concerned that CAP would rely on advertiser-provided figures and would have little way of independently verifying them.

The model CAP are proposing is used for restricting alcohol and gambling advertising to under 18s. However, CAP have not evaluated the effectiveness of these rules in non-broadcast media. The experiences and anecdotal evidence of Alcohol Concern and other organisations working in this field strongly suggest that these rules are not effective, especially in regards to the targeting of teenagers. Furthermore, food and drink is a different proposition, as they are not prohibited from sale to under 18s, unlike alcohol and gambling.

In short, a 25% threshold is highly problematic. The aim is to reduce exposure as much as feasible. Instead of a threshold, we recommend using a definition based on the likely appeal of the advertising to children, considering the following criteria (but not the percentage or total numbers of children exposed):

1. Product appeal to children: are the food and drink items intended for children, or do they appeal to them?
2. Marketing content: is it designed to attract the attention of children?
3. Marketing placement: is the location, timing, mode and/or placement of the marketing communication such that children may be exposed to it? Is the marketing placement such that children can normally be reached?

There is precedent from the Advertising Standards Authority for this approach. It is also being explored or advocated in countries as diverse as Australia, Brazil, Canada, and Chile, and recommended by an emerging consensus of academics and public health professionals.

## **Question 6: Application to different media**

*Should CAP apply the placement restriction on HFSS product advertising to all non-broadcast media within the remit of the Code, including online advertising?*

**Yes.**

The placement restriction on HFSS product advertising should be applied to all non-broadcast media, including online advertising, without any exemptions.

Many of the newer marketing techniques that are used on non-broadcast media are not obviously identifiable as marketing. This lack of transparency is a direct violation of article 2.1 of the CAP Code. In addition, the lack of transparency when using social media for marketing purposes is also

problematic because children are influenced by commercial communications which they cannot recognise as marketing.<sup>16</sup> This issue is compounded by the fact that marketing is oftentimes curated by intermediaries such as Google and YouTube. As a result, brands are legitimised by these third parties in the eyes of some children, increasing the trustworthiness of the content accessed through these intermediaries' sites.<sup>17</sup> Lastly, the proliferation of devices, including smaller ones such as smart phones, makes it harder for parents to control what their children see.

The placement restriction should also be extended to cover areas outside of CAP's remit, i.e. packaging, licensed and brand equity characters, in-school marketing (including fundraising sponsored by food and beverage companies, donations to schools, curricula material and reward programmes), point-of-sale marketing, and sponsorship.

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<sup>16</sup> European Commission. *Study on the impact of marketing through social media, online games and mobile applications on children's behaviour*. Brussels 2016.

<sup>17</sup> Ofcom. *Children and Parents: Media Use and Attitudes Report*. 2015.