

CAP Consultation: food and soft drink advertising to children

Submission by the Internet Advertising Bureau UK – July 2016

Introduction

- 1 The Internet Advertising Bureau (IAB UK) is the industry body for digital advertising in the UK. It represents over 1200 businesses engaged in all forms of online and mobile advertising, including media owners and advertising technology businesses.
- 2 The IAB's five key objectives are to:
 - Prove the value of digital media by delivering 'best in class' industry research and breaking down barriers to advertising spend;
 - Enable a trustworthy and responsible medium through cross-industry standards and self-regulation;
 - Educate and inspire marketers through intensive learning programmes and thought-leading events;
 - Improve ad trading efficiency through measurement guidelines and creative standards; and
 - Advocate for an optimum policy and regulatory environment for the market to continue to thrive.

Further information is available at www.iabuk.net.

Proposals to introduce restrictions on HFSS product advertising to children in the UK CAP Code

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

- 3 IAB UK and our members are committed to promoting responsible advertising practices, including when it comes to marketing to children.
- 4 Both the CAP and BCAP Codes are robust. However we agree that there is a need to review the CAP Code to explore whether new restrictions are necessary and appropriate in the context of concerns about children's diets and health.
- 5 **The IAB therefore supports the principle of amending the CAP Code in order to align it more closely with existing industry good practice such as the [EU pledge](#) and the provisions in the BCAP Code.**

- 6 It should be borne in mind that any new restrictions are unlikely, in themselves, to deliver a significant impact. Research suggests that obesity is influenced by a variety of factors, as highlighted in the consultation document:

‘These factors act indirectly, as well as directly, making it overly simplistic to regard each as playing a separate role....’

Importantly, Livingstone also cautioned against relying on the extent to which individual factors can be determined to influence preferences, knowledge and behaviour.’

CAP Consultation: food and soft drink advertising to children, paras. 36.5.3.-36.5.4

- 7 As the consultation paper also identifies:

‘Advertising is acknowledged to have some effect on immediate food preferences, but this is relatively small, particularly when compared to factors like parental and peer influences and the decline in physical activity rates.’

CAP Consultation: food and soft drink advertising to children, para. 12.2

- 8 While the evidence does not demonstrate that there is a direct link between online advertising of HFSS products and excess weight or obesity in children, advertising clearly does have some influence on children’s food and drink preferences. If a multi-faceted approach is needed, then we believe that the online advertising industry can and should play a role in helping to address the issue. By introducing restrictions on advertising HFSS food and drink to younger children the industry can contribute by not undermining or appearing to contradict other measures aimed at addressing diet and weight issues among children. It is difficult, however, to identify how advertising can support a wider, multi-faceted approach in the absence of the publication of the Government’s obesity strategy.
- 9 It is important, however, that any changes reflect the evidence base and take into account the limited extent to which restrictions to non-broadcast advertising may be able to influence a change in children’s behaviour and diets, and thereby their health. This is particularly relevant in the context of question 4.

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?

- 10 The existing BCAP guidance could be a useful basis for CAP guidance on identifying brand advertising that promotes HFSS products, and consistency is desirable for advertisers and consumers. CAP should take into account any feedback received on the BCAP guidance, and consult its members on new draft guidance in the usual way.
- 11 IAB UK and its members would welcome clarification from CAP, for the avoidance of doubt, that other types of promotional activity that brands may undertake, such as sponsorship, are out of scope of any new rules and guidance.

Selecting a nutrient profiling model

2. Should the CAP Code adopt the Department of Health (DH) nutrient profiling model to identify HFSS products?

- 12 IAB UK does not have a view on the selection of a nutrient profiling model but consistency with BCAP requirements seems desirable and sensible from both an advertiser and consumer point of view.

Existing prohibitions on the use of promotions and licensed characters and celebrities

3. 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?

- 13 If new rules are introduced that distinguish HFSS/non-HFSS food and drink products in non-broadcast advertising, we believe it would be consistent to amend the existing rules in respect of promotions and licensed characters and celebrities so that they apply to advertising for HFSS products only.

Introducing media placement restrictions

4(a) Should CAP introduce a rule restricting the placement of HFSS product advertising?

- 14 We support the introduction of a placement rule restricting HFSS product advertising to younger children, subject to our response to questions 4(b) and 5 below.

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?

ii) aged 15 or younger?

Children aged 11 or younger

15 We believe that the proposed restriction should apply to those aged 11 or younger. This is in line with the existing voluntary [EU food pledge](#) and would be, in our view, a change that reflects the evidence and focuses restrictions proportionately on the audience that is most likely to benefit from them.

16 The consultation acknowledges that there is not strong evidence of a direct link between non-broadcast advertising and excess weight or obesity: 'evidence of a significant direct effect is absent; advertising only tangentially affects the childhood diet and obesity issue.' (*para. 42.3*).

17 The consultation also identifies the limitations of the available evidence, both methodologically and in terms of scope, and that there are significant gaps in the evidence base in relation to online advertising.

'... since the rules were strengthened, CAP considers that no significant new evidence on non-broadcast advertising's effect on children has emerged, which might present a clearly evidence-driven basis for regulatory change...'

CAP Consultation: food and soft drink advertising to children, para. 12.2

18 However, we accept the argument put forward in the consultation paper that it is justifiable to look beyond the available evidence of the effect of non-broadcast food and drink advertising on children when considering whether a change is needed, and to consider wider social issues and costs. But we also agree with CAP that in exploring this issue, regard must be had to 'what level of restriction would have an appropriate balance of impact to effectively meet CAP's policy aim.' (*para. 47.3*).

19 Younger children have been shown to have less-developed critical capacities for understanding and evaluating marketing and are generally considered to be more vulnerable and open to influence than older children.

20 The CAP Code already distinguishes between children aged under 16 and those aged under 12 in terms of advertising food and drink, and contains stricter rules for advertising

to younger children by prohibiting the use of promotional offers and celebrities and licensed characters popular with children).

- 21 In addition, the advertising industry already recognises and takes steps to minimise the potential impact of HFSS product advertising on children. Food industry practice currently goes further than the CAP Code via the aforementioned [EU pledge](#) through which food companies representing 80% of European food advertising spend (including the likes of McDonalds, Unilever, Nestle, Mars and Coca-Cola) have committed to not advertise their products to children under the age of 12 years unless the product meets certain EU nutritional criteria. A similar initiative exists in the US and in 2014 the [Consumer Goods Forum](#) committed to stopping ads for 'junk food' (i.e. products that fail to meet certain nutrition criteria) to children under 12 by 2018.¹ Some advertising platforms also have policies in place that prohibit advertising to under-13s.
- 22 The online advertising industry has also implemented a self-regulatory framework for behavioural, or interest-based, advertising. The European Digital Advertising Alliance (EDAA) has established the [EU Framework for Online Behavioural Advertising \(OBA\)](#), which sets out what constitutes good practice in relation to OBA and includes a set of principles that participating companies that use OBA data to deliver ads must adhere to. One of the key principles ([Principle IV.A](#)) relates to audience segmentation and requires businesses to agree to not create OBA audience segments in order to target children aged 12 and under.
- 23 In practice, therefore, much of industry – with advertisers leading the way – is working to (or developing) self-imposed restrictions relating to advertising to children that in some areas are stricter than those found in the CAP Code. It seems sensible to address the apparent disconnect and bring the Code into line with existing good practice.
- 24 Taking into account this wider context we believe that there is a social responsibility case to be made when it comes to younger children whose critical capacity is not fully developed. **We therefore support the introduction of new rules to restrict advertising of HFSS products to under 12s.**

Children aged 15 or younger

- 25 We do not believe that there is a sufficiently strong basis on which to argue for a wide, broad-scope prohibition for all children under 16.

¹ <http://www.theconsumergoodsforum.com/the-consumer-goods-forum-publishes-marketing-communications-to-children-implementation-guide>

26 The consultation does not draw out evidence relating to the 12-15 age group, though it notes that 'there is still evidence of a link between advertising and older children's food preferences' (*para 47.9*). It acknowledges that there are gaps in the evidence base relating to older children, and that much of the evidence that is available is drawn from research into advergames (which are less likely to be played by older children):

'Importantly, the evidence base establishing advertising's likely effect on children's food preference focuses disproportionately on younger children. In relation to TV, Livingstone (2006) noted that the experimental evidence then available pointed most strongly to the effect being predominantly for children aged 2-11. The Institute of Medicine review (McGuinnis et al (eds.), 2005), considered in Livingstone (2006: 5), found that there was insufficient evidence about advertising's influence on purchase requests, beliefs and short term consumption in 12-18 year olds to draw regulatory conclusions.

This picture has not changed significantly; only around a quarter of the evidence identified by the PHE review relates to children over the age of 12. For instance, the evidence in relation to advergames, which made up the majority of the evidence directly relevant to non-broadcast media, covered an age range of 5-12 years (PHE, 2015: 26). This is similar to the profile of the selected literature included in the WHO Europe review (2013: 26-27).'

*CAP Consultation: food and soft drink advertising to children,
paras. 47.6-47.7*

27 We note that various theoretical arguments were put forward as part of the pre-consultation as to why restrictions should apply to all under-16s (or even under-18s) and would like to address some of those here.

28 *Restrictions should apply to older children because they currently have higher levels of excess weight or obesity.* This implies that advertising is – in part – a cause of this problem and therefore part of the solution. As outlined earlier in this response, the evidence does not support this argument.

29 *Older children should be included in any restrictions because they are more vulnerable to peer pressure and other social influences.* This may be the case, but it is not clear whether or how advertising restrictions could have any meaningful impact on these factors.

30 *Definitions of 'children' used elsewhere should be automatically applied to advertising to children.* There is no single definition of 'children' in either the CAP or BCAP Codes – the

rules differ (for good reason) depending on the context. In some other (non-advertising) contexts, 'children' are defined as being anyone under 16, particularly where, for example, their rights need to be protected or there is evidence that a direct harm may arise otherwise. But as the consultation paper notes:

'The nature of the risks and potential harms involved do not provide a basis for a precautionary approach. It is clear that consumption of an HFSS product is not, of itself, harmful. This can be contrasted with tobacco where the toxicity and highly addictive nature of the product mean any level of consumption, and therefore advertising, present a real potential for harm.'

CAP Consultation: food and soft drink advertising to children, para. 42.2

31 CAP notes that proportionality must be taken into account in the case for change and this includes the nature of the potential harm to children. It is reasonable and proportionate to take a different approach to regulating HFSS product advertising than to regulating other types of advertising or to other areas of regulation and child protection; one that takes into account the context, the specifics of the issue and the evidence.

32 *There should be restrictions on placement of ads in media aimed at older children based on the risk that younger children may see that media.* The same argument applied by CAP in the consultation to the possibility of restrictions in adult-oriented media holds true for media aimed at older children:

'It is clear that children do not simply consume media that is directed only at them, but often form part of audiences more diverse in age. However, aiming restrictions at media targeted specifically at children protects the right of adult viewers in general media to see ads for products of interest to them. The proposed approach serves to proportionately focus new restrictions on where they are likely to have to the most impact.'

CAP Consultation: food and soft drink advertising to children, para. 48.2

33 The CAP Code should not aim to restrict media more widely than is appropriate in order to address the particular issue or protect the particular audience group in question. The CAP (and BCAP) Code, through placement restrictions, does not aim to (and would not be able to, practically speaking) absolutely prevent children seeing advertising for particular products; its purpose is to minimise the risk that children might see such advertising as far as is reasonably possible by closely restricting how advertising can be targeted and where it can be shown (as reflected by the 25% provision in the proposed new rule relating to audience composition, and in other CAP Code rules such as those that apply to tobacco and alcohol advertising).

34 Therefore we do not believe it would be reasonable or proportionate to apply advertising restrictions beyond the age group in question (which in our view, should be under-12s). Wider restrictions could potentially also impinge on advertisers' rights to advertise to older audiences by ruling out media aimed at or consumed by older teens (e.g. those up to 18).

Summary

35 Given that the role of non-broadcast advertising as a factor in children's (particularly older children's) weight/obesity has not been differentiated or quantified, and therefore the potential positive impact of restrictions is unknown and unquantifiable, CAP should exercise caution in introducing prohibitions.

36 Taking that into account, we do not believe that either the evidence or the wider context justifies restricting advertising of HFSS products to all children aged under 16.

37 Having said that, if restrictions for the under 12 age group are introduced, the case for an under-16 restriction can be reviewed at a later date if more evidence emerges, or if it is shown that applying restrictions to only those aged under 12 is either problematic (e.g. because younger children are accessing media aimed at older children) or effective (and therefore desirable to extend to older children). CAP could then consider the case for extending the restriction.

Defining the audience

5. 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.

Should the CAP Code use the 25% measure for the purpose of restricting HFSS product advertising?

38 Existing CAP rules use the 25% measure and it makes sense to adopt the same approach to any new restrictions for HFSS product advertising.

39 There are likely to be additional costs and practical challenges, however, for advertising intermediaries managing the placement of ads in identifying 'permitted' media placements online. While there are existing 25% rules for advertising age-restricted products, some online platforms and publishers do not have experience of applying this measure (because, for example, they don't allow advertising of age-restricted products) and will not necessarily have standardised data available about their audiences. There

are also currently no regulatory media placement restrictions in the UK based on an under 12 or under 16 category (although there will be some precedent set by the advertisers signed up to the EU pledge).

- 40 There is no one single way of measuring online audiences, and no BARB equivalent for online media. Some businesses will use industry standard audience measurement data such as that provided by, for example, Nielsen or Flurry analytics. The OBA self-regulatory good practice principles (as described in paragraph 22 of this response) prevent the use of OBA data to target children under 12 (which means, in practice, that online advertising businesses participating in the framework do not hold personal data, such as age, about this audience). The [Information Commissioner's Office's 'Personal information online Code of Practice'](#) states that 'Some form of parental consent would normally be required before collecting personal data from children under 12... You may even decide to obtain parental consent for children aged over 12 where there is greater risk. This has to be determined on a case by case basis.'
- 41 In line with the data protection and OBA good practice described above, many online advertising businesses have policies in place that mean that they do not collect personal data (such as age) from younger children. In practice, therefore, platforms and publishers will not be able to identify the age of their child users or audiences with sufficient accuracy. Marketers will instead need to demonstrate that 75% or more of their audience is over the specified age.
- 42 If, however, there are difficulties with reliably measuring audience age to an appropriate degree of confidence, this could mean having to adopt an overly cautious approach (e.g. using an 'over 18' category – as currently applies to alcohol, for example – rather than 'over 12/16') which could disproportionately restrict advertising of HFSS products (which are not intrinsically harmful or age-restricted at the point of sale).
- 43 On that basis, if restrictions are to be introduced, the online advertising industry would want to discuss audience data and measurement with CAP and the ASA so that there is a clear understanding on both sides about what data is available, the nature of that data, and what would be reasonably expected to be produced in the event of an investigation.**

Application to different media

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

44 The CAP Code should be media-neutral and we see no reason why online advertising, or advertising in any other non-broadcast media, should not be considered in scope for any new restrictions on HFSS product advertising.

IAB UK July 2016