



**The Advertising Association**

## **European Commission Green Paper Healthy Diets and Physical Activity**

### **Consultation Response by the Advertising Association**

The Advertising Association (AA) is a federation of 32 trade bodies and organisations representing the advertising and promotional marketing industries, including advertisers, agencies, the media and support services in the UK. It is the only body that speaks for all sides of an industry that was worth over £18.3 billion in 2004. Further information about the AA, its membership and remit, can be found at the following location: <http://www.adassoc.org.uk>

The AA welcomes the invitation to contribute to this consultation and looks forward to the Commission's response to stakeholder views.

Since many questions in the consultation are best answered by specialist practitioners, the Advertising Association has elected to focus on those issues which it considers to be directly related to advertising issues.

The questions the AA will address in this paper are:

- Are voluntary codes (self-regulation) an adequate tool for limiting the advertising and marketing of energy dense and micronutrient poor foods? What would be the alternatives to be considered if self-regulation fails?
- How can effectiveness in self-regulation be defined, implemented and monitored? Which measures should be taken towards ensuring that the credulity and lacking media literacy of vulnerable consumers are not exploited by advertising, marketing and promotion activities?
- In which way can nutrient profiling scoring systems such as those developed recently in the UK contribute?

**Are voluntary codes (self-regulation) an adequate tool for limiting the advertising and marketing of energy dense and micronutrient poor foods? What would be the alternatives to be considered if self-regulation fails?**

#### **The nature of advertising codes in the UK**

The term self-regulation, in the case of both broadcast and non-broadcast advertising codes, denotes the autonomy the industry has over the content of the codes and how they are enforced. It does not denote freedom to opt out of the rules laid down by those codes.

#### **How should codes be used?**

The AA believes that industry self-regulation, within the framework of a legislative backstop (where this is necessary or appropriate), is the best approach for consumers, business and government. Self-regulation provides a fast, efficient and flexible basis for policy-making. Codes can be modified to reflect society's needs more quickly than legislation. It is a cost-effective mechanism for government, consumers are able to report suspected breaches and the record shows that codes protect consumers against advertising which breaches them.

The major role of codes should be to ensure that consumers make purchase choices based on clear information which is not misleading. The AA is confident that codes already in place achieve this goal. These codes support and supplement a significant body of consumer law at EU and national level.

### **How do the UK advertising codes work?**

The UK advertising and direct marketing industry operates the British Code of Advertising, Sales Promotion and Direct Marketing. This applies to non-broadcast media and is administered via a self-regulatory body, the Committee of Advertising Practice (CAP), which creates, revises and enforces the code.

The non-broadcast (CAP) code is independently administered by the Advertising Standards Authority (ASA). Adjudications on potential breaches are made by the ASA Council of 12 members, a majority of which must have no connection with the industry.

The CAP code has a proven track record of success and the ASA is recognised by the UK Office of Fair Trading as the 'established means' of implementing the UK's Control of Misleading Advertisements Regulations 1988.

In recognition of the success of the non-broadcast system, the UK Government and Ofcom have contracted out the regulation of broadcast advertising (television and radio) to the ASA and the Broadcast Committee of Advertising Practice (BCAP). BCAP is the co-regulatory body with day-to-day responsibility for writing and maintaining the BCAP TV and radio advertising codes.

Whilst CAP and BCAP codes are administered by the ASA in a similar way, the broadcast system is ultimately responsible to the statutory regulator, OFCOM.

More information on the ASA, CAP and BCAP system can be found at the link [www.asa.org.uk](http://www.asa.org.uk).

### **The Role of Codes in Food Advertising**

The Green Paper question in itself gives a rather distorted view of how the obesity problem should be approached.

Using any form of regulation (self-regulation or legislation) which merely focuses on the restriction of marketing relating to one type of food is overly simplistic and will have a limited impact on the behavioural changes required to address obesity issues in Europe.

The UK broadcast regulator (OFCOM) concluded from its own research that consumers' diets are mainly influenced by factors other than advertising. Changing the rules around advertising of HFSS products as a stand-alone method of tackling obesity would be unlikely to succeed. Countries, such as Sweden, where bans have been imposed on advertising to children, continue to suffer from the same problems of childhood obesity. It is the AA's opinion that an evidence-based and proportionate approach should be taken to policy-making in this area and all options, including self-regulation, should be considered on their individual merits.

It is in the interest of both industry and government to ensure that consumers are able to make an informed choice about the foods they incorporate into their diet. The role of consumer education in this arena cannot be overstated. Consumers should be aware of the need to eat a balanced diet and take part in regular physical activity.

In relation to UK advertising codes, the following actions are being taken:

- **Broadcast Code**

OFCOM and UK industry is currently reviewing the way in which foods are advertised to children over broadcast media. Both industry and OFCOM agree that rules governing the content of food and soft drinks advertisements should limit the scope of advertisers to exploit the vulnerabilities of children, particularly in regard to the use of animations, promotions and nutritional and health claims. However, any restrictions on the volume and scheduling of that

advertising would need to take into account the likely impact on the viability of the media services affected. Broadcasters could potentially face substantial revenue losses and this could limit their ability to deliver positive editorial messages about children's health, diet and lifestyle.

- **Non-Broadcast Code**

The industry recognises that different rules relating to food advertising, applying to different media would not be logical. For this reason, once the results of the OFCOM/industry consultation on the broadcast code are available, the non-broadcast code will seek to apply similar principles. All code changes, broadcast and non-broadcast, will be brought into effect at the same time.

### **Summary**

The AA is of the opinion that agreements on content limitation will demonstrate the adaptability of the codes and industry's ability and willingness to respond effectively to changing consumer concerns.

A self-regulatory regime has the flexibility to incorporate suitable rules on food and soft drinks advertising. At the same time it allows the use of advertising to promote balanced diets and healthy lifestyles and investment in public awareness raising, consumer information and educational programmes for children in particular.

**How can effectiveness in self-regulation be defined, implemented and monitored? Which measures should be taken towards ensuring that the credulity and lacking media literacy of vulnerable consumers are not exploited by advertising, marketing and promotion activities?**

### **Monitoring Effectiveness**

As a member of the European Advertising Standards Alliance ([www.easa-alliance.org](http://www.easa-alliance.org)), the AA is a signatory to the Advertising Self-Regulatory Charter. This Charter lays out the industry vision for effective self-regulation and is based on globally accepted codes of advertising and marketing practice from the International Chamber of Commerce. EASA is working to ensure that the Charter is implemented effectively by self-regulatory bodies across the EU and already has a monitoring strategy in place, which reports publicly on a regular basis.

More recently, EASA and its members have been working in conjunction with DG SANCO and key consumer organisations via the Advertising Round Table. This group provides a forum for discussion of codes and their implementation and has proved invaluable as a way of ensuring buy-in from consumer organisations and regulators.

### **Vulnerable Consumers**

The Green Paper asks whether self-regulation can ensure vulnerable consumers are not exploited by advertising marketing and promotional activities. EU law on consumer protection focuses on these vulnerable consumers in both the Unfair Commercial Practices Directive and the Television Without Frontiers Directive. EU and national law are supported and supplemented by the CAP and BCAP codes. Within the codes specific references to issues such as gambling, alcohol, financial services, medicines and children ensure that in sensitive areas more vulnerable consumers, particularly children, are protected. When new concerns arise, such as in the case of food advertising aimed directly at children, the codes can be amended to offer further protection where necessary.

As well as the application of the codes to advertising activities, the industry is providing support on the issue of media literacy via the Media Smart programme, which provides children with the tools to help them understand and interpret advertising, so that they are able to make informed choices. More information on the Media Smart programme can be found at [www.mediasmart.org.uk](http://www.mediasmart.org.uk). There are also an increasing number of healthy living initiatives and programmes aimed at increasing awareness of the issues, such as ITV's Britain on the Move, Niktrition and Elfy Foods.

**In which way can nutrient profiling scoring systems such as those developed recently in the UK contribute?**

It is the AA opinion that it cannot comment on the scientific integrity of the profiling scheme developed in the UK by the Food Standards Agency (FSA). We refer you to the response to this consultation of the Food and Drink Federation (FDF) where the collective scientific expertise of the manufacturing industry is represented.

In addition to the FDF comments, we would suggest that it is more appropriate in the context of this debate to focus on diet than individual foods and to take a holistic approach, recognising that obesity is a result of an imbalance between energy consumed and energy expended.

**Conclusion**

The Advertising Association is committed to promoting a responsible approach to food and soft drink advertising. This is best achieved through full compliance with statutory regulation already in place, complemented by industry codes which ensure that compliance.

The Advertising Association calls on the Commission to use self-regulation as a complement to existing legislation in order to reach European health goals. It questions the need for any new EU legislation in this policy area.

The Advertising Association believes that well-informed consumers make better choices and is fully committed to supporting voluntary industry schemes and reputable consumer education programmes.

The Advertising Association is confident that more high-calibre schemes such as those mentioned in this paper will be developed in the future.

The Advertising Association calls on the Commission to continue to take a partnership approach to ensuring European citizens remain healthy. This approach should include government, consumers and industry.

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