

Ofcom consultation: Regulation of advertising of less healthy food and drink

IAB UK Response April 2023

About IAB UK

1. The Internet Advertising Bureau (IAB UK) is the industry body for digital advertising, committed to building a sustainable future for digital advertising. We represent and bring together all elements of the digital advertising supply chain through our 1,200 members, including media owners, agencies and brands, and through our Board, which comprises 25 leading businesses in the sector.
2. In view of our remit we will only be responding to question 3 in the consultation, which relates to Ofcom's proposal to designate the ASA as a co-regulator for the prohibition on online advertising for less healthy food and drink products.

Q3) Do you agree with Ofcom's proposal to designate the ASA as a co-regulator for the prohibition on online advertising for less healthy food and drink products?

YES

3. IAB UK fully supports Ofcom's proposal to designate the ASA as a co-regulator for the prohibition on online advertising for less healthy food and drink (LHFD) products.
4. In order to ensure that new online restrictions are implemented successfully, it is essential that day-to-day regulation is delivered by a body that not only meets the relevant statutory criteria in Section 368Z19(9) of the 2003 Act, but one that in practice also has appropriate industry knowledge and relationships to be able to assume regulatory responsibility and deliver the necessary guidance quickly, so that industry has the clarity and resources needed to be able to understand and comply with the new rules well ahead of the implementation date.
5. The ASA has extensive experience of regulating online ads in the UK via the rules set out in the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code) which is written and maintained by the Committee of Advertising Practice (CAP). As the frontline regulator of online ads for the last 20 years, the ASA has a proven track record of driving high rates of compliance with the CAP Code and of effectively

enforcing the rules in the case of Code breaches. It is also widely recognised as a 'one stop shop' for consumers wishing to make complaints relating to ads in any medium.

6. Designation of the ASA as a co-regulator would mean that, in practice, the CAP Code would be the vehicle for implementing the new LHFD ad prohibition. CAP has built long-standing relationships with industry and an understanding of online ad formats and advertisers' practices. The ASA and CAP work closely and effectively with CAP members, including the IAB, as well as industry participants, to ensure that the rules and corresponding guidance are clear, fit for purpose, and are reviewed and updated where necessary to account for changes in advertising practices, technologies and media. CAP also keeps novel rules and guidance under short-term review as standard to ensure that they are working well and to address any implementation issues.
7. Given the ASA's existing oversight of online ad regulation, including CAP Code rules that apply to advertisers and restrict the content and placement/targeting of online ads for HFSS products, designating the ASA as a co-regulator for the new online prohibitions for LFHD products would ensure regulatory continuity for industry and for consumers.
8. This continuity is especially important in the light of the fact that online HFSS ads that are not in scope of the new LHFD product ad restrictions will still be required to comply with existing CAP Code rules (enforced by the ASA) around content, targeting and placement. If a different body was the frontline regulator for LHFD ads, this would create unnecessary fragmentation and burdensome complexity for industry and consumers.
9. From an industry perspective it is therefore desirable that regulatory continuity is maintained. The designation of the ASA as the day-to-day regulator for the new online prohibition would give advertisers certainty about how this regulation will work in practice - for example, the processes that will be followed to investigate and deal with non-compliance and the type of guidance and support they can expect. Given that there is a complex inter-relationship between the new LHFD product ad prohibition and existing HFSS online ad restrictions, having one organisation that is responsible for the rules and guidance for both will be invaluable for advertisers and for ensuring regulatory consistency and cohesion.
10. The ASA and CAP have extensive experience of working with and supporting industry to implement and adapt to regulatory changes and ensuring compliance. This experience will help ensure the transition to the new regime is managed as well as possible.
11. The proposed co-regulatory arrangement set out in the consultation document is clear and reflects a model already established between Ofcom and the ASA for broadcast and ODPS advertising. Industry is already
12. very familiar with this model, so applying it here (with necessary variations to reflect the differences in the regulatory framework for broadcast, ODPS

and online advertising) provides welcome regulatory certainty. Consumers will also benefit from this continuity, as the ASA will remain the sole point of contact for online ad complaints. As such, we agree that the proposal will preserve the established relationship between the ASA and advertisers, and consumers.

13. We agree with Ofcom that the current established co-regulatory models are suitable templates from which the co-regulatory arrangement for the regulation of online advertising for LHFD products can be developed. However, the precise nature of the co-regulatory arrangement for online advertising will need to reflect the scope of the LHFD online advertising provisions in the Communications Act 2003, particularly that advertisers are accountable for compliance with the requirements of the law. This is clearly set out in the specified functions that Ofcom proposes to designate to the ASA in paragraph 5.33 of the consultation document.
14. We are content with Ofcom's proposed approach to enforcing the new prohibitions, i.e. taking an approach that is analogous to Ofcom's regulatory enforcement guidelines.
15. **We therefore support the proposal to designate the ASA as a co-regulator with responsibility for the day-to-day regulation of the new prohibition of online ads for LHFD products.**