



Action on Salt and Sugar Response to the Advertising Standards Authority Consultation on the implementation of the “less healthy” food and drink product advertising restrictions

About Action on Salt and Sugar

Action on Salt and Sugar is a non-profit organisation working to improve population health and food environments through impactful food and drink nutritional research. We inform policy, influence the food industry, raise awareness, and build advocacy for salt and sugar reformulation.

For more information on our submission, please contact Sonia Pombo RNutr, Head of Research and Impact s.pombo@qmul.ac.uk

As members of the Obesity Health Alliance, we would like to direct you to their detailed submission and evidence and reiterate some key points below.

Question (i – iii)

We agree the wording accurately reflects the relevant legislation.

Question (iv)

We broadly agree that the guidance in Part 3 accurately reflects the relevant legislation.

We are however concerned that the new draft guidance, which provides businesses with a brand exemption, does not encourage the promotion of healthier products or incentivise reformulation, and risks diluting any intended public health impact. Research has demonstrated the effect that brand only advertising has on increasing consumption of unhealthy products, contributing to excess calories and weight gain.

Local governments and Transport for London have restricted brand only advertising, with noted success and impact. This demonstrates the industry’s ability to change their advertising strategy, enabling them to successfully comply with brand only restrictions. To ensure the guidance remains aligned with the policy’s original purpose, we support the OHA’s proposed wording to bring the balance back in favour of encouraging healthier options rather than simply protecting brand equity.

Proposed addition: *“In line with the policy intent of the less healthy food and drink restrictions, advertisers should prioritise the promotion of healthier products and reformulated lines within their portfolios. The brand advertising exemption should not be used to promote or sustain brand recognition primarily associated with less healthy products. Where advertisers have both healthier and less healthy ranges, use of the exemption should clearly support the communication of brand attributes linked to the company’s healthier offerings or its commitment to product improvement.”*

Question (v)

We broadly agree that the guidance in Part 4 reflects the intent of the legislation. However, we recommend that the section on determining products in scope be strengthened to ensure clarity and consistency of interpretation. Specifically, any products - whether depicted as generic, photorealistic, or stylised - that fall within one of the listed less healthy food and drink categories, should be presumed to represent a less healthy variant unless explicitly stated and demonstrated otherwise.

This would prevent ambiguity in assessing whether creative content featuring common food types (for example, pizzas, confectionery or burgers) should be considered in scope. This approach aligns with the spirit and letter of the legislation and ensures that advertisers do not inadvertently breach the restrictions through ambiguity. It also complements the overarching policy aim - to reduce children's exposure to less healthy food and drink marketing, regardless of presentation format, and will reduce the burden on the ASA.

Question (vi)

We broadly agree that the guidance in Part 5 is clear and reflects the intent of the legislation. However, we are concerned with the wording in 5.4.3 of the television ODPS – Advertisements by a non-SME delivery service, aggregator or similar *service on behalf of a food or drink...* To future-proof the policy and maintain its integrity, we recommend the guidance to explicitly clarify how compliance will be monitored and enforced on television and ODPS. This would help ensure that large intermediaries cannot act as vehicles for SMEs to collectively advertise less healthy products under the guise of exemption.

For clarity it is worth also adding that this is for television and ODPS rules only. Online, the exemption for SMEs is only applicable where the person paying is at the time when the payment is made, a food or drink SME. The exception does not extend to those paying on behalf of a food or drink SME.

Question (vii)

We broadly agree that the guidance in Part 6 is clear and reflects the relevant legislation. However, the section on influencer marketing (6.3.6) could be strengthened to reduce the risk of circumvention.

The ASA has stated they will assess each case based on the specific circumstances; however, this opens up concerns over practicality of enforcement - including whether monetary or non-monetary consideration has been made “for” influencer content. Given the dynamic and fast-evolving nature of influencer marketing, it is important to future-proof the guidance and ensure consistency of enforcement across broadcast, online, and influencer media. Without such clarity, there is a risk that the same marketing message could be restricted on one platform but permitted on another.

We recommend adding a clarifying statement along the following lines:

Proposed addition:

“Where an influencer has received products, benefits, or incentives from a brand including gifts, services and experiences, this should normally be treated as advertising for the purposes of these regulations, irrespective of whether an explicit oral or written contractual arrangement exists.”

This would bring the guidance in line with ASA principles on transparency and consumer protection, while ensuring the policy’s intent - to reduce children’s exposure to less healthy food and drink marketing - is applied consistently across all media.

Question (viii)

We do not agree that the guidance in Part 7 is clear or fully aligned with legislative intent. While we recognise that the ASA’s interpretation of the brand advertising exemption is largely consistent with the current legal position, the guidance as drafted leaves significant ambiguity around what constitutes a “brand” and the extent to which brand-related imagery, packaging, or sub-brands “brand of a range of products” fall within scope.

Key concerns include:

1. Unclear definitions of “range” and “brand” vs “specific product”

‘Range’ and ‘brand’ are undefined in practice. Sub-brands or minor variants e.g. flavours, shapes and limited editions) could be grouped as a ‘range’ to claim, exemption. For example, *Cadbury Dairy Milk* is widely understood to be a specific product and fits the ASA’s definitions as a product that “is capable of being purchased”, but the existence of variants such as Fruit & Nut or Daim could allow the company to argue that “Dairy Milk” is a *brand of a range of products*. The same could be said for Dairy Milk buttons, which has also been developed into multiple shapes and flavours like mint, orange and twisted, but again, “Dairy Milk buttons” is also a purchasable item.

The ASA must clearly define ‘brand of a range of products’, to exclude short-term, seasonal or limited-edition products, as well as products not widely available in UK retail space. It must also specify that sub-brands or product lines that are commonly understood as specific purchasable products are not eligible under the brand exemption. This will prevent a loophole that rewards portfolio engineering over health outcomes.

2. Equity brand characters

Equity characters closely tied to less healthy products could be repurposed to qualify as a ‘range’, again undermining the policy.

The ASA’s guidance on equity brand character is welcome recognition of the association and influence this form of marketing has. It is good to see that these are being recognised as an extension of the unhealthy product and are therefore not granted a brand exemption. However,

it is important that the ASA recognises the risk of not setting out how and when the character is used after July 2025. The ASA must prevent this by stating that the brand equity character has to have been in equal use with each of the products within the range before July 2025.

3. Unfair advantage to brands with formal range naming

Complex vertical brand architectures gain exemptions that simpler brands don't, irrespective of product healthiness. This creates an uneven playing field, privileging established branding strategies and penalising simpler or more transparent labelling (Please refer to the OHA's submission for detailed examples and illustrations for how this could be problematic).

It is welcome to see that the Government has added in an expiration on the definition of a brand of a range of products, by stating that it only applies where it was in use before 16th July 2025. As a regulator that aims to be proportionate and consistent, the ASA must bring in regulation which ensures that every company is given opportunities, especially when they are moving closer to better alignment with the government's policy aims - by creating healthier products. It should not be the case that older companies are given advertising privileges to advertise their unhealthy ranges while newer companies - especially those marketing relatively healthier products - cannot.

We therefore recommend that the guidance be strengthened to:

- explicitly distinguish between brand-level advertising and sub-brand or product-line promotion.
- Explicitly state that any products that are temporary (e.g. seasonal)/limited offer/stunts/not widely available in Major Grocery Retailers to purchase on a UK retail site will not be considered as part of a range of products. NB this approach is line with ASA's current approach on [promotional pricing](#)
- clarify that any brand imagery, packaging or creative device that evokes a specific less healthy product should bring the advert within scope; and
- suggest that the exemption should not apply where a brand or corporate identity is primarily or predominantly associated with less healthy products.
- Suggest that where a healthier product exists within a 'brand of range of products', that product must be advertised instead of using the brand exemption

This would limit the risk of erosion or expansion of the exemption over time, maintain consistency with the policy's original intent to incentivise the promotion of healthier products, and protect the regulation's long-term public health impact.

4. Generic Packaging/imagery

There is concern that 'generic' pack shots (Figure 1) can effectively identify a specific, less healthy product while claiming exemption. Under the current guidance, such packaging may

fall under the brand advertising exemption, even though consumers could reasonably interpret it as promoting a particular less healthy product.

Figure 1. McDonald's distinctive wrapper with cheese



We recommend that for both the ASA's workload and the ambitions of the policy, this loose interpretation to comply with the brand only advertising exemption is not granted, and that packaging, shapes and distinctive get up that an average viewer would link to a specific less healthy product, be treated as in-scope.

Proposed wording:

"Generic product-related imagery, including packaging, product shapes or distinctive presentation, that would reasonably be interpreted as a specific less healthy product renders the advertisement in-scope."

5. Combination of brand cues

We are concerned that clause 7.2.5 allows for too much flexibility, allowing for broad use of colours, themes, jingles, etc, provided the less healthy product isn't 'directly' depicted. This leaves ample room for indirect identification, and risks undermining the policy.

This narrow interpretation may also create an unfair commercial advantage for some businesses. For example, own-label retailers, delivery platforms and out-of-home providers are far more likely to advertise 'non-specific' (but still less healthy) products without branding, meaning their products evade restrictions simply due to presentation. There is no evidence that "non-specific" less healthy products are any less harmful than "specific" ones, or that they are any less likely to influence purchasing behaviour, brand loyalty, or children's dietary choices. We also note that the current government definition of "less healthy" is already narrow, as it excludes many well-known less healthy categories such as chocolate spreads and sausage rolls.

Proposed wording:

“Any branding, packaging, imagery, or combination of creative techniques that could reasonably be interpreted as representing a specific less healthy product should be treated as in scope and not exempt”

6 Correct spelling in 7.3.1

Please correct the third bullet to:

- the name of a range that is a common part of the names of all product variants supplied under it, but is not the full name of a specific less healthy product (for instance, each product variant has a further named descriptor, like a flavour), **and** will fall under the brand advertising exemption

7. Legacy names

The guidance is in line with the legislation which introduces exemptions for brands that existed before 16 July 2025, either as part of a company, franchise, or pre-existing product range. There is no definitive registry distinguishing brands from product ranges, but evidence from trademark registrations, product listings and marketing strategies may provide understanding. We are concerned that pre-16 July exemptions will risk entrenching legacy less health product brands, and penalising newer, potentially healthier entrants.

Clear guidance is needed here to prevent legal complications and misuse of the exemption by brands retroactively claiming status for less healthy products. The proof for the purposes of marketing, advertising or retail sale immediately before 16 July 2025 must be supplied and independently verifiable.

8. Realistic images

We understand clause 7.4.1 to mean that if a realistic healthier product closely resembles a less healthy product, it could be interpreted as promoting the less healthy version, and that advertisers should make it clear that it is for a healthier product. However, it is unclear where the line falls between a product looking like a specific less healthy product versus a generic less healthy product.

For clarity, to minimise risk, and to reduce the burden on the ASA, we recommend that the guidance:

- advise advertisers to exercise caution when using imagery that could reasonably be perceived by an average viewer as a specific less healthy product, whether or not it meets the statutory definition of “realistic”; and encourage that where a product is featured in an advertisement and is not a product for sale, advertisers should use healthier versions of foods and products to avoid falling within this clause.
- Include ‘product shape’ as well as ‘flavour variants’

Proposed alternative wording:

“Any image that is recognisable as a specific less healthy food or drink product, whether in or out of its packaging, should be considered in scope.”

While we recognise that the current wording is set out in the statutory instrument, and think the addition of ‘the advertisement should include additional information to make clear that the product shown is a non-less healthy variant’ is very helpful, these practical clarifications would help advertisers apply the rules consistently, reduce the risk of inadvertent breaches, and better protect the policy’s public health objectives.

Question (ix)

We broadly agree with the wording of the guidance, however it needs to be clearer, fuller and future-proofed, and it should reflect the child-health purpose of the policy.

In the DHSC brand exemption consultation, a longer list of factors was provided to help determine whether content depicts a product, including:

- Name of the product (unless the name is the same as the brand name, pre-16 July 2025)
- Text
- Imagery
- Audio cues
- Jingles
- Livery
- Straplines
- Fonts
- Colour schemes
- Characters
- Other branding techniques

We propose this list be expanded to include:

“Or new creative techniques which aim to build recognition, brand equity, loyalty, emotional response, or similar associations, and any combination of the above.”

Finally, we question the appropriateness of the ASA using a “*reasonably well-informed, reasonably observant and circumspect persons in the UK*” to be the standard bearer of whether an advertisement is for a less healthy product in a child health policy, The aim of which is to reduce the influence of unhealthy food advertising to improve children’s health, and therefore the policy needs to be applicable to the impact advertising has on children. They would be unlikely to meet the definition of the ASA’s standard bearer, and yet, the advertising will and does have impacts on them, as well evidenced. The ASA must reconsider how they interpret the Government’s reference to “persons” in the context of the policy.