

SECTION 13: FOOD, DIETARY SUPPLEMENTS AND ASSOCIATED HEALTH AND NUTRITION CLAIMS

Question 78: Do you agree that BCAP has correctly reflected the requirements of Articles 8(1), 10(1) and 28 of the NHCR in BCAP's proposed rules 13.4 and 13.4.1 (Permitted Nutrition Claims)? If your answer is no, please explain why.

<i>Responses received in favour of BCAP's proposal from:</i>	<i>Summaries of significant points:</i>	<i>BCAP's evaluation of those points and action points:</i>
<p>Advertising Association; ASDA; An organisation; Charity Law Association;</p>	<p>1.1 Agree that BCAP's proposed rules 15.1, 15.1.1 and 15.2 correctly reflect the requirements in Articles 8(1), 10(1), 13, 14 and 28. Those respondents did not identify any changes from the present to the proposed rules that would amount to a significant change in advertising policy and practice, apart from those highlighted in the consultation document.</p>	<p>1.1 N/A</p>
<p>British Nutrition Foundation</p>	<p>1.2 We agree. In terms of nutrition claims there are currently ongoing discussions at the EC regarding changes and additions to the Annex, so it will be important to keep abreast of these developments to make sure the code remains up to date.</p>	<p>1.2 BCAP agrees. BCAP understands the list of permitted nutrition claims in the proposed Code is likely to be out of date soon after publication of the new Broadcast Code. In light of that and the need for users of the Code to access the guidance note to view the 'conditions of use' to make the relevant claim, BCAP considers the list of nutrition claims should be removed from</p>

		the Code and placed in a guidance document only.
An organisation	<p>1.3 This correctly reflects the requirements of Articles 8(1), 10(1) and 28 of the NHCR. It is our view that broadcasters and advertisers require more clarity in respect of what constitutes “Transitional Periods” relating to the Community Register.</p>	<p>1.3 BCAP considers the Code cannot reflect every transitional period of the NHCR. The ‘Background’ to the proposed Food, Dietary Supplements and Associated Health and Nutrition Claims states:</p> <p><u>...Regulation (EC) No 1924/2006 on Nutrition and Health Claims made on Foods is complex and mandatory and seeks to protect consumers from misleading or false claims. Transitional periods apply and broadcasters are advised to take advice on the effect of the Regulation. Advertising industry stakeholders might find the Guidance to Compliance with European Regulation (EC) No 1924 on Nutrition and Health Claims Made on Foods published by the Food Standards Agency useful: www.food.gov.uk.</u></p>
(& Food Standards Agency; Health Food Manufacturers Association; Proprietary Association of Great Britain)	It is not clear which body constitutes or what is meant by “the relevant Home Authority.”	<p>BCAP agrees. Claims that require authorisation must be submitted to the Food Standards Agency, i.e. the UK Competent Authority. BCAP considers it is unrealistic for the Code to reflect every type of health claim, transitional period and authorisation process. The Code states:</p> <p>Depending on the nature of the claim EC Regulation 1924/2006 contains a number of</p>

	<p>We are concerned that pre-clearance bodies require greater transparency with regard to the practical and operational effects of this code rule.</p> <p>13.4.1 This is ambiguous and potentially open to error of interpretation as to the intention of "...having the same meaning for the audience.."</p>	<p>complex transition periods, including those for health which are still being assessed for adoption to the EU list of permitted health claims (and which comply with existing national provisions), and for trademarks or brand names in use prior to 1 January 2005. There is no transition period for disease risk claims, which are prohibited until authorised. BCAP advises advertising industry stakeholders to take advice on the effect of the Regulation.</p> <p>BCAP understands this is a not a comment on the proposed rules but the application of them.</p> <p>BCAP has transposed the text of the NHCR. The criteria for each claim in the annex of the NHCR explicitly permits claims that would have the same meaning for the consumer. The BCAP Code cannot be more permissive or restrictive than the NHCR. The ASA Council is experienced in assessing implied claims and the context of an advertisement.</p>
<p>Nestle</p>	<p>1.4 We understand the transitional period for health claims applies to health claims made before <u>1 July 2007</u> (not 19 Jan 2007 as stated in your proposed code).</p>	<p>1.4 BCAP considers it is unrealistic for the Code to reflect every type of health claim, transitional period and authorisation process. BCAP considers this amended paragraph sufficient:</p>

		<p>Depending on the nature of the claim EC Regulation 1924/2006 contains a number of complex transition periods, including those for health which are still being assessed for adoption to the EU list of permitted health claims (and which comply with existing national provisions), and for trademarks or brand names in use prior to 1 January 2005. There is no transition period for disease risk claims, which are prohibited until authorised. BCAP advises advertising industry stakeholders to take advice on the effect of the Regulation.</p>
	<p>Also please note that a transitional period also exists for products bearing trademarks or brand names existing before 1 Jan 2005 which do not comply with the NHCR but may be marketed until 19 Jan 2022 (this is not recognised in the proposed code)</p>	<p>BCAP agrees. BCAP considers this reference to the relevant transition periods is adequate</p> <p>Depending on the nature of the claim EC Regulation 1924/2006 contains a number of complex transition periods, including those for health which are still being assessed for adoption to the EU list of permitted health claims (and which comply with existing national provisions), and for trademarks or brand names in use prior to 1 January 2005. There is no transition period for disease risk claims, which are prohibited until authorised. BCAP advises advertising industry stakeholders to take advice on the effect of the Regulation.</p>
	<p>13.4.1. 'contains' claims apply to named nutrient or other substance - we believe this is not limited to</p>	<p>BCAP agrees. BCAP proposes addition of: contains [name of nutrient] to the guidance. (see</p>

	just vitamins or minerals (as indicated in the proposed code).	also response to 1.2).
<p><i>Responses received against BCAP's proposal:</i></p> <p>Danone (& Sainsbury's; British Retail Consortium Consumer policy Group)</p>	<p><i>Summaries of significant points:</i></p> <p>1.5 We disagree. While Article 8.1 is reflected accurately with reference to the use of nutrition claims that would have the <i>same meaning</i> to consumers being permitted (Rule 13.4.1), Article 10 is not reflected with similar accuracy. Danone believes that alternative wordings to the claims authorised under Article 13 and Article 14 of the NHCR 1924/2006 should be permitted provided that consumers understand the claim and are not mislead.</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p>1.5 BCAP agrees. BCAP understands the NHCR will not control the exact wording of health claims covered by Article 13 and Article 14, therefore BCAP considers a similar flexibility as with nutrition claims, can be applied to those health claims.</p> <p>13.4 "Authorised health claims in the Community Register or claims that would have the same meaning for the audience may be used in advertisements."</p>
<p>Food Standards Agency;</p>	<p>1.6 The rule doesn't seem to capture all the different types of claims and associated transition periods. For example, claims referring to the role of a nutrient in growth, development and functions of the body can continue to be used during the transition period regardless of whether an application has been made, whereas disease risk reduction claims cannot be made until they have been authorised. Perhaps this paragraph is not necessary at all since the previous paragraph refers to transition periods?</p>	<p>1.6 See BCAPs response to 1.3</p>

Question 79: Do you agree that BCAP has correctly reflected the requirements of Article 3(b) of the NHCR in BCAP's proposed rule 13.4.4? If your answer is no, please explain why.

13.4.4

Claims of a nutrition or health benefit that gives rise to doubt the safety or nutritional adequacy of another product are unacceptable.

<i>Responses received in favour of BCAP's proposal from:</i>	<i>Summaries of significant points:</i>	<i>BCAP's evaluation of those points and action points:</i>
Advertising Association; ASDA; An organisation; Charity Law Association; Proprietary Association of Great Britain; Healthfood Manufacturers Association	<p>2.1 Respondents agree that BCAP's proposed rule 13.4.4 correctly reflect the requirements in Article 3(b). Those respondents did not identify any changes from the present to the proposed rules that would amount to a significant change in advertising policy and practice, apart from those highlighted in the consultation document.</p>	<p>2.1 N/A</p>
British Nutrition Foundation	<p>2.2 We consider it may also be useful to include the requirements of article 3(c) (nutrition and health claims shall not encourage or condone excess consumption of a food) if this is not already covered in the code.</p>	<p>2.2 BCAP considers proposed rule 13.3 adequately caters for the British Nutrition Foundation concerns.</p> <p>13.3 Advertisements must not condone or encourage excessive consumption of any food.</p>

<p>Question 80: Do you agree that BCAP has correctly reflected the requirements of Article 9 of the NHCR in BCAP's proposed rules 13.5.1 and 13.5.3 (comparative nutrition claims)? If your answer is no, please explain why.</p>		
<p><i>Responses received in favour of BCAP's proposal from:</i></p>	<p><i>Summaries of significant points:</i></p>	<p><i>BCAP's evaluation of those points and action points:</i></p>
<p>Advertising Association; ADSA; An organisation; Charity Law Association; Proprietary Association of Great Britain</p>	<p>3.1 Respondents agree that BCAP's proposed rules 13.5.1 and 13.5.3 correctly reflect the requirements in Article 9. Those respondents did not identify any changes from the present to the proposed rules that would amount to a significant change in advertising policy and practice, apart from those highlighted in the consultation document.</p>	<p>3.1 N/A</p>
<p>British Retail Consortium Consumer Policy Group; British Nutrition Foundation; Sainsbury's</p>	<p>3.2 We consider the provisions have been correctly interpreted. However the wording used for 13.5.1 is not as clear as it could be, we therefore suggest it is reworded: Comparative nutrition claims may only be made between foods of the same category.</p>	<p>3.2 BCAP agrees. BCAP proposes: 13.5.1 Comparative nutrition claims must compare the difference in the claimed nutrient to a range of foods of the same category which do not have the composition which allows them to bear a nutrition claim. BCAP advises advertising industry stakeholders to take advice on the effect of the Regulation.</p>
<p>Danone</p>	<p>3.3 We do not agree with rule 13.5.1 which reads "Comparative nutrition claims must show any</p>	<p>3.3 BCAP agrees. BCAP considers the NHCR ensures comparisons are only made in certain</p>

differences between a product bearing a Permitted Nutrition Claim and food of the same category.” It is not a requirement of Article 9 of the NHCR 1924/2006 to *show any differences* between the comparable products. This Rule goes beyond the requirements of Article 9 by seemingly requesting the advertiser to declare any other compositional differences between the products in question. Article 9 only requests that the advertiser when making a comparative claim:

- Considers a range of foods within the category for comparing the particular nutrient and/or energy value to, i.e. the advertiser could take the average amount of a nutrient and/or energy value from the foods within the same category to compare their products nutrient and/or energy value to;
- The advertiser must state this difference in their advertising;
- The comparison must be between the same quantity of product; and
- The comparison cannot be made to other products which also have the capacity to bear that claim.

Danone suggests the following amendment to Rule 13.5.1 in order to reflect Article 9 of the NHCR 1924/2006 –

“Comparative nutrition claims must ~~show any differences between a product bearing a Permitted Nutrition Claim and food of the same category~~

circumstances. The Code cannot reflect every requirement of the NHCR and stakeholders are advised to seek guidance on its effect. BCAP considers re-drafted 13.5.1 reflects the need for comparisons to

1: be made between foods of the same category and

2: only use nutrition claims that permissible e.g. will have a beneficial nutritional or physiological effect and is contained in a significant quantity.

BCAP proposes:

13.5.1

Comparative nutrition claims must compare the difference in the claimed nutrient to a range of foods of the same category which do not have the composition which allows them to bear a nutrition claim.

13.5.2

An advertisement may use one product as the sole reference for comparison only if that product is representative of the products in its category.

13.5.3

The difference in the quantity of a nutrient or energy value must be stated in the advertisement and must relate to the same quantity of food.

	<p><i>compare the composition of the food bearing the claim to a range of foods that have a composition which does not enable them to bear the same claim.”</i></p> <p>If this does not reflect the intention of the proposed Rule 13.5.1 then greater clarification is sought on how Rule 13.5.1 should be interpreted.</p>	<p style="text-align: center;"><i>Article 9</i> Comparative claims</p> <p>1. Without prejudice to Directive 84/450/EEC, a comparison may only be made between foods of the same category, taking into consideration a range of foods of that category. The difference in the quantity of a nutrient and/or the energy value shall be stated and the comparison shall relate to the same quantity of food.</p> <p>2. Comparative nutrition claims shall compare the composition of the food in question with a range of foods of the same category, which do not have a composition which allows them to bear a claim, including foods of other brands.</p>
Food Standards Agency	<p>3.4 The codes state that “comparative nutrition claims must show any differences between a product bearing a permitted nutrition claim and foods of the same category”. This doesn’t quite reflect Article 9 of Regulation (EC) 1924/2006 accurately, which says that the comparison should relate to a range of foods of the same category. For example, if a particular product claims to be “reduced fat”, it should be reduced (i.e. 30% less) compared to a range of other products of the same category. It is not necessary for other differences between the products to be stated, only the difference in the claimed nutrient. In fact, it may be misleading to make certain comparisons and thus be prohibited under Regulation (EC) 1924/2006.</p>	<p>3.4 BCAP agrees. See BCAPs response to 3.3</p>
An organisation requesting confidentiality	<p>3.5 “Comparative nutrition claims must show any differences between a product bearing a Permitted</p>	<p>3.5 See BCAPs response to 3.3</p>

Nutrition Claim and foods of the same category.”

We are unsure if that statement is intended to reflect Article 9(2) of the NHCR. Article 9(2) is, at best, ill-defined; at worst, incomprehensible. The Commission has also issued some guidance in this area, the upshot of which is reasonable, but it is difficult to see how it relates to the specific wording of Article 9(2) rather than providing a different or additional requirement.

You have our sympathy in attempting to transpose the NHCR’s requirements on comparative nutrition claims into the code in a meaningful and user-friendly way. Nevertheless, we feel obliged to point out that we do not understand the draft rule and we are not confident that it is consistent with the Regulation. For example, the draft rule states “a product bearing a permitted nutrition claim”; Article 9(2) effectively refers to comparators “which do not have a composition which allows them to bear a claim.” Does the product need to “bear” a claim or does it (or the comparator) just need to be capable of bearing a claim? The rule describes “a claim”; to which claim does this refer? The comparative nutrition claim; any nutrition claim; or a particular nutrition claim? We would happily be corrected but, so far as we are aware, there are no easy, definitive or even confident answers to these questions. We believe, however, that both the ASA and the industry will struggle to interpret 13.4.3 as it has currently been drafted and we would prefer

	<p>to avoid seeing an ambiguous rule written into the code. One alternative might be to replace 13.4.3 with a more general statement of the principle which we believe underlies 9(2): what the Commission’s guidance describes as “significant comparison”; for example: “To make a comparative nutrition claim between a product and a comparator, the absolute amount of the relevant nutrient or energy in the product undergoing comparison must be significant.” This would prevent the situation where a reduced fat claim is made about bread in the event that the product is 30% lower in fat than standard bread. Although technically accurate that claim would be meaningless because there is no significant fat component in bread and hence no significant fat reduction in the diet. Perhaps this specific situation has some overlap with the more general wording in the first statement of draft rule 15.2 and a suitable amendment to that statement (making it more specific; see response to Q55) might suffice?</p>	
Kraft Foods	<p>3.6 We would ask for clear alignment with EU Guidance in this area, which allows comparison between <i>foods that are similar in terms of nutritional content</i>, rather than restricting the comparison to foods within the same category.</p> <p>This approach would provide greater clarity to advertisers, as neither the EU Regulation nor the CAP/BCAP codes provide a definition of food categories.</p>	<p>3.6 BCAP has reflected the requirements of the NHCR as closely as possible. The Code must reflect the law. Article 9 explicitly requires comparisons to be made with foods of the same category (see BCAP’s response to 3.3). The FSA guidance also provides a helpful interpretation of Article 9 and how it could be applied in practice given the lack of established food categories. The European Commission has produced guidance on food categories that</p>

		stakeholders may find useful: http://ec.europa.eu/food/food/labellingnutrition/claims/guidance_claim_14-12-07.pdf
MARS	<p>3.7 Article 9.1 of the Regulation states "...The difference in the quantity of a nutrient and/or the energy value shall be stated and the comparison shall relate to the same quantity of food". It does not expressly state where the percentage/value information must appear.</p> <p>In comparison, the amendments to the Codes require that "The difference in the quantity of a nutrient or energy value must be stated in the marketing communication/in the advertisement and must relate to the same quantity of food."</p> <p>Therefore, we propose deleting the words in bold to accurately reflect the wording of the Regulation</p>	<p>3.7 BCAP disagrees. BCAP considers this is a matter of ensuring the audience is not misled (a central principle of the NHCR) and has enough information to qualify the comparison. BCAP considers the difference in the quantity of the nutrient must be stated in the advertisement.</p>
<p>Question 81: Do you agree that BCAP has correctly reflected the requirements of Article 9 of the NHCR and the guidance from the European Commission in BCAP's proposed rule 13.5.2 (product comparisons)? If your answer is no, please explain why.</p>		
<p><i>Responses received in favour of BCAP's proposal from:</i> Advertising Association; ASDA;</p>	<p><i>Summaries of significant points:</i></p> <p>4.1 Respondents agree BCAP's proposed rule 13.5.2</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p>4.1 N/A</p>

<p>An organisation; Charity Law Association; Proprietary Association of Great Britain;</p>	<p>correctly reflects the requirements in Article 9. Those respondents did not identify any changes from the present to the proposed rules that would amount to a significant change in advertising policy and practice, apart from those highlighted in the consultation document.</p>	
<p><i>Responses received against BCAP's proposal:</i></p> <p>None</p>	<p><i>Summaries of significant points:</i></p>	<p><i>BCAP's evaluation of those points and action points:</i></p>
<p>Question 82: Do you agree that BCAP has correctly reflected the requirements of Article 12(a) of the NHCR in BCAP's proposed rules 13.6 and 13.6.1 (implying health could be affected by not consuming a food)? If your answer is no, please explain why.</p>		
<p><i>Responses received in favour of BCAP's proposal from:</i></p> <p>Advertising Association; ASDA; An organisation; Charity Law Association; Proprietary Association of Great Britain; British Nutrition Foundation;</p>	<p><i>Summaries of significant points:</i></p> <p>5.1 Respondents agree BCAP's proposed rule 13.6.1 correctly reflects the requirements in Article 12(a). Those respondents did not identify any changes from the present to the proposed rules that would amount to a significant change in advertising policy and practice, apart from those highlighted in the consultation document.</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p>5.1 N/A</p>

Question 83: Do you agree that BCAP has correctly reflected the requirements of Article 3(e) of the NHCR in BCAP's proposed rules 13.6 and 13.6.4 (changes in bodily functions)? If your answer is no, please explain why.

<i>Responses received in favour of BCAP's proposal from:</i>	<i>Summaries of significant points:</i>	<i>BCAP's evaluation of those points and action points:</i>
<p>Advertising Association; ASDA; An organisation; Charity Law Association; Proprietary Association of Great Britain;</p>	<p>6.1 Respondents agree that BCAP's proposed rule 13.6.4 correctly reflects the requirements in Article 3(e). Those respondents did not identify any changes from the present to the proposed rules that would amount to a significant change in advertising policy and practice, apart from those highlighted in the consultation document.</p>	<p>6.1 N/A</p>
<p>British Nutrition Foundation</p>	<p>6.2 We consider it may be difficult to define which references will 'give rise to or exploit fear in the audience' and the ASA may wish to include examples of this in any guidance documentation provided.</p>	<p>6.2 BCAP considers this reference is similar to an existing rule in the Harm and Offence section of the Broadcast Codes. Stakeholders and the ASA are used to interpreting this requirement and BCAP considers it will not cause difficulty.</p> <p>Existing rule in BCAP TV Code:</p> <p>6.4 Personal distress Advertisements must not, without good reason, contain material which is likely to cause serious distress to significant numbers of viewers</p>

		<p>Proposed rule in Harm and Offence section: 4.9 Advertisements must not distress the audience without justifiable reason. Advertisements must not exploit the audience's fears or superstitions.</p>
<p><i>Responses received against BCAP's proposal:</i></p> <p>None</p>	<p><i>Summaries of significant points:</i></p>	<p><i>BCAP's evaluation of those points and action points:</i></p>
<p>Question 84:</p> <p>i) Do you agree that BCAP has correctly reflected the requirements of Article 14 of the NHCR and Schedule 6 Part 1(2) of the FLRs in BCAP's proposed rules 13.6 and 13.6.2 (claims that state or imply a food prevents, treats or cures human disease)? If your answer is no, please explain why.</p> <p>ii) Do you agree that BCAP has correctly reflected the relevant provisions of Regulation (EC) 1924/2006 on Nutrition and Health Claims on Foods in the proposed BCAP Code? If your answer is no, please explain why.</p>		
<p><i>Responses received in favour of BCAP's proposal from:</i></p> <p>Advertising Association; ASDA; An organisation;</p>	<p><i>Summaries of significant points:</i></p> <p>7.1 Respondents agree that BCAP's proposed rule 13.6 and 13.6.2 correctly reflect the requirements in Article 14 of the NHCR and Schedule 6 Part 1(2) of the FLR's. Those respondents did not identify any changes from the present to the proposed</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p>7.1 NA</p>

	<p>rules that would amount to a significant change in advertising policy and practice, apart from those highlighted in the consultation document.</p>	
<p>Proprietary Association of Great Britain</p>	<p>7.2 i) We agree. ii) We do not have a definitive answer to this as yet. 13.7.1 of the BCAP Code requires that claims based on low levels of vitamins and minerals must include a target group. This may be viewed as a 'National Provision' (Article 22 of the Regulation). However, the amended text allows for a more accurate use of the target groups, and certainly the revised list of groups who may benefit is much easier to justify on public health grounds than the previous version.</p>	<p>7.2</p> <p>BCAP considers the new regime of nutrition and health claims is adequately regulated by the general misleading provisions and the need to hold evidence to support claims; the requirement that nutrition and health claims must be used in accordance with their conditions of use as set out by the European Commission and; all nutrition and health claims will be regulated under the provisions of regulation 1924/2006. BCAP has decided on the following wording:</p> <p><u>Vitamins, Minerals and other Food Supplements</u></p> <p>BCAP advises advertising industry stakeholders to ensure that claims made for vitamins, minerals and other food supplements are in line with the requirements of Regulation (EC) No 1924/2006 on Nutrition and Health Claims made on Foods.</p> <p>13.7</p> <p>Advertisements must not state or imply that a balanced and varied diet cannot provide appropriate quantities of nutrients in general. Individuals must not be encouraged to swap a healthy diet for supplementation.</p> <p>13.7.1</p>

		<p>Nutrition and Health claims for food supplements must be permitted or authorised as provided for at 13.4 above. Advertisements that contain nutrition or health claims must be supported by documentary evidence to show they meet the conditions of use associated with the relevant claim, as specified by the European Commission.</p>
<p>Sainsbury's</p>	<p>7.3</p> <p>We consider the requirements under rule 13.4.2 could be interpreted to go beyond the requirements in the Nutrition and Health Claims Regulation. Marketers have to be able to prove, not hold documentary evidence that their product contains the quantity of vitamin or mineral or substance specified under the 'conditions of use' of an approved article 13 claim. They do not have to provide evidence of a healthy relationship already given a positive opinion by EFSA and approved by Standing Committee. For nutrition claims, the marketers have to prove that their product contains the quantity required under the criteria laid down in Annex I of Nutrition and Health Claims Regulation for that nutrient or substance when making that claim.</p> <p>13.11 We consider this rule goes beyond the provisions of the EU Nutrition and Health Claims Regulation. The way to establish whether a claim can be made on a product is by assessing it against the nutrient profile set for this purpose and which is currently under development. The</p>	<p>7.3</p> <p>BCAP agrees. BCAP considers rule 13.4.2 could clarify the situation further, and has amended it to state:</p> <p>13.4.2 Advertisements that contain nutrition or health claims must be supported by documentary evidence to show they meet the conditions of use associated with the relevant claim.</p> <p>BCAP understands the nutrient profiles have yet to be established. BCAP will review the use of the Food Standard Agency's nutrient profiling model once nutrient profiles have been established at European level and are agreed for use in the UK.</p>

	<p>OFCOM model which classifies food as HFSS and Non-HFSS should not be used for the purpose of claims.</p> <p>The Code refers to food and soft drinks while the Nutrition and Health Claims Regulation applies to food and all drinks.</p>	<p>The FSA NP model is a sufficient model to apply to TV advertisements. The BCAP Code must reflect the provisions of article 3(e) of Directive 89/552/EEC (Television Without Frontiers Directive) as amended by Directive 2007/65/EC (Audio Visual Media Services Directive) that states <i>“Members states and the Commission shall encourage media service providers to develop codes of conduct regarding inappropriate audiovisual commercial communication, accompanying or included in children’s programmes, of foods or beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended”</i>.</p> <p>This provision requires a method of differentiation is used for food/soft drink product advertisement in children’s programming on Television.</p> <p>The provisions in the NHCR relevant to alcoholic drinks are reflected in Section 19: Alcohol.</p>
Charity Law Association	<p>7.4 We would like to highlight the grey area which proves problematic for Health Charities around the</p>	<p>7.4 13.6 These are not acceptable in advertisements for</p>

issue of whether the mere presence of a Health Charity's logo is by its nature an implied disease-reduction claim – we understand that it is for national regulators to clarify this and it may be worth following up with the FSA to establish their position. If there is no clarity then this would mean that logos could not go on food packaging unless authorised by the European Commission which we do not believe is what was intended.

products subject to this Section:

13.6.3

Health claims that refer to the recommendation of an individual health professional. Health claims that refer to the recommendation of an association are acceptable only if that association is a health-related charity or a national representative body of medicine, nutrition or dietetics.

BCAP considers article 11 allows, but does not directly control, the use of endorsements by national associations of medical, nutrition or dietetic professionals and health-related charities. Any health claims, whether expressed or implied, linked to a recommendation or endorsement e.g. by a logo, are likely to be controlled by the NHCR.

An advertisement that contains an endorsement by a health related charity, that implies a health claim, will have to have an authorised claim in place for that particular product. The implied claim must have the same meaning for the audience. BCAP advises advertising industry stakeholders to take advice on the effect of the Regulation.

If the advertisement implies a medicinal claim the ASA would need to liaise with the medicines regulator, the MHRA.

<i>Responses received against BCAP's proposal:</i>	<i>Summaries of significant points:</i>	<i>BCAP's evaluation of those points and action points:</i>
Danone	<p>7.5 We disagree. We consider there is a need for alternative wording of claims authorised under Article 14 and of the NHCR 1924/2006 provided that consumers are not misled by such claims. Danone proposes the following amendments to Rule 13.6 and Rule 13.6.2 in order to encompass these principles:</p> <p><i>“Claims that state or imply that prevents, treats or cures human disease. With the exception of reduction of disease risk claims are acceptable if authorised by the European Commission authorised under Article 14 of the NHCR 1924.2006 and any claim likely to have the same meaning for the audience.”</i></p> <p>A key principle of the NHCR 1924/2006 is consumer understanding and ensuring that consumers are not misled by health claims needs to be encompassed further within the BCAP Code so as to reflect its practical application.</p> <p>The consumer studies should be based on a robust methodology which is capable of application</p>	<p>7.5 The BCAP Code already states in rule 13.4 that authorised claims or claims that would have the same meaning to the audience are acceptable. BCAP considers this is sufficient:</p> <p>13.4 ...Authorised health claims in the Community Register or claims that would have the same meaning for the audience may be used in advertisements. [Web link to Community Register]</p> <p>The issue of consumer understanding and misleadingness is adequately catered for in the Code and applies to all advertisements, not just those covered by the NHCR. There is a dedicated section on Misleadingness and the annex of the Code reflects the requirements of the CPRs in relation to consumer understanding.</p> <p>BCAP considers this is not a comment on the proposed rules, but their application. The ASA will take into account any substantiation</p>

	<p>across a variety of products and types of communication. The methodology should be acknowledged at the EU level.</p>	<p>advertisers provide to support claims in their advertisements.</p>
<p>British Retail Consortium Consumer Policy Group</p>	<p>7.6 In general we feel that the reference to the FSA guidance in the document (background) should be removed and the specific sections of that document referred to in each of the relevant sections of the Codes.</p> <p>It is crucial that the Codes are kept up-to-date. This is especially relevant in relation to claims since many issues in the Nutrition and Health Claims Regulation are still being discussed; e.g. positive list of health claims, final list of nutrition claims, amendments to the criteria of certain nutrition claims and nutrient profiles to establish the foods that can bear claims.</p> <p>Furthermore, the Codes use defined terms such as food product, low alcohol etc. This are defined terms under the Nutrition and Health Claims Regulation. The use of these terms in the Code should be consistent with the definitions under the Regulation.</p> <p>The Code refers to food and soft drinks while the Nutrition and Health Claims Regulation applies to food and all drinks.</p>	<p>7.6 BCAP understand the FSA Guidance is in the process of being revised. BCAP considers referencing particular sections of the guidance is not particularly helpful given several sections of the guidance are applicable. The Code is not a replacement for relevant legislation.</p> <p>BCAP agrees. BCAP has reflected the general principles of the NHCR which shouldn't change in future. The list of nutrition claims will now sit in guidance, which can be easily amended as and when necessary.</p> <p>ASA and CAP will apply the same definitions as the law where necessary.</p> <p>BCAP considers the Food, Dietary Supplements and Associated Health and Nutrition Claims section covers all food and soft drinks. Soft drink</p>

	<p>13.11 This rule gold plates the provisions of the EU Regulation. The way to establish whether a claim can be made on a product is by assessing it against the nutrient profile set for this purpose and which is currently under development. The OFCOM model which classifies food as HFSS and Non-HFSS should not be used for the purpose of claims.</p> <p>13.9.2 The provisions under this rule should be consistent with those in paragraph 13.3. Fruit and vegetables should be allowed to be advertised in both TV and radio.</p>	<p>includes all drinks except alcoholic drinks. There is a dedicated section that applies to alcoholic drinks and specific rules in that section that cover the requirements of the NHCR.</p> <p>See BCAP's response to 7.3.</p> <p>13.9.2 Advertisements must not seem to encourage children to eat or drink a product only to take advantage of a promotional offer: the product should be offered on its merits, with the offer as an added incentive. Advertisements featuring a promotional offer should ensure a significant presence for the product.</p> <p>13.3 Advertisements must not condone or encourage excessive consumption of any food</p> <p>BCAP does not consider the rules to be inconsistent; nor does it consider that the rules prevent fruit and vegetables from being advertised on TV or radio.</p>
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	<p>13.6.5 The proposed wording in this rule suggests that all claims related to the rate and amount of weight loss are banned, when as highlighted in the FSA guidance on the Regulation it is not so straightforward.</p> <p>We believe that the provisions in the Codes should reflect that reference to terms such as 'rapid' or 'fast' could be used.</p> <p>FSA guidance (Question 36): http://www.food.gov.uk/multimedia/pdfs/ec19242006complianceguide.pdf</p>	<p>The independent ASA Council is experienced in interpreting advertisements and administering the advertisement content codes and will apply the letter as well as the spirit of the rule. Stakeholders are advised to consult the FSA guidance however it is not binding on the ASA.</p> <p>BCAP considers the FSA Guidance is helpful and stakeholders are advised to consult it; however, it does not bind the ASA Council.</p> <p>The existing rules on slimming and weight loss have been easily interpreted and applied over many years by broadcast stakeholders. The ASA and BCAP have an established position on 'rapid' and 'fast' weight loss claims for a variety of slimming and weight loss products, including foodstuffs. Additionally, the ASA and BCAP are experienced in assessing the context of an advertisement.</p>
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Question 85:

- i) Do you agree that BCAP has correctly reflected the requirements of Regulation 21(a) of the Infant and Follow-on Formula Regulations (2007) (amended) in BCAP's proposed rule 13.8? If your answer is no, please explain why.**
- ii) Do you agree that BCAP has correctly reflected the requirements of Regulation 19 of the Infant Formula and Follow-on Formula Regulations 2007 (amended) in BCAP's proposed rule 13.8.1? If your answer is no, please explain why.**
- iii) Do you agree that BCAP has correctly reflected the relevant provisions of the Infant and Follow-on**

Formula Regulations (2007) (amended) in the proposed BCAP Code? If your answer is no, please explain why.

<i>Responses received in favour of BCAP's proposal from:</i>	<i>Summaries of significant points:</i>	<i>BCAP's evaluation of those points and action points:</i>
Advertising Association; Charity Law Association	<p>8.1 Respondents agree BCAP's proposed rules 13.8 and 13.8.1 correctly reflect the requirements in Regulation 19 of the Infant Formula and Follow-on Formula Regulations 2007 (amended).</p>	<p>8.1 N/A</p>
Department of Health	<p>8.2 The FSA will respond on proposed rules on advertising on infant formula and follow on formula and compliance with relevant EU and domestic legislation. However, DH is of the view that any advertising rules must reflect both the spirit and the letter of any EU or domestic legislation in order to provide the strongest possible protection for infants and their mothers.</p>	<p>8.2 The present BCAP Codes do not include a rule specific to the advertising of infant or follow-on formula. The Infant Formula and Follow-on Formula Regulations 2007 (as amended) prohibit the advertising of infant formula (except in scientific publications or for the purposes of trade before retail). The Regulations are intended to prevent breastfeeding from being discouraged. In keeping with its general policy objectives and to help broadcasters and advertisers to comply with the Code's general requirement that broadcast advertisements must comply with the law, BCAP proposes to reflect the key provisions of the Regulations that are directly relevant to broadcast advertisements. The proposed rules reflect the requirements of regulations 19, 20 and 21: http://www.statutelaw.gov.uk/legResults.aspx?a</p>

[ctiveTextDocId=3435319](#)

BCAP considers a fundamental aspect of the Infant Formula and Follow-on Formula Regulations 2007 (as amended) is the need to ensure advertisements for infant formula and follow-on formula are differentiated clearly. It proposes to make that provision explicit in its Code.

The BCAP Code cannot realistically reflect every requirement of law. Stakeholders are required to consult specific legislation that is relevant to their advertisements. BCAP considers the reference to the relevant legislation including the Infant Formula and Follow-on Formula Regulations 2007 and the European Regulation (EC) No 1924/2006 on Nutrition and Health claims made on foods along with the principle and rules of the compliance section, sufficiently address the DoH's concerns.

Principle

The overarching principles of this Code are that advertisements should not mislead, cause serious or widespread offence or harm, especially to children or the vulnerable. Broadcasters are responsible for ensuring that the advertisements they transmit comply with both the spirit and the letter of the Code. All compliance matters (copy clearance, content,

		<p>scheduling and the like) are the ultimate responsibility of each broadcaster. Any matter that concerns a legal dispute should be resolved through law enforcement agencies or the Courts.</p> <p>Rules</p> <p>1.1 Advertisements must reflect the spirit, not merely the letter, of the Code.</p> <p>1.2 Advertisements must be prepared with a sense of responsibility to the audience and to society.</p> <p>1.3 Advertisements must comply with the law and broadcasters must make that a condition of acceptance.</p> <p>1.3.1 Advertisements must not state or imply that a product can legally be sold if it cannot.</p>
<p>Breastfeeding Manifesto Coalition</p>	<p>8.3 We welcome proposed rule 13.8.1.</p> <p>However, in order to truly avoid any confusion rule 13.8.1 needs to go further and ban the advertising of follow on formula completely. 'Follow-on formula' is a name which emerged in the early 1980s to replace the 3rd stage formulas. However, since it continues to replace the milk component of the diet for babies over 6 months of age, it is clearly a breastmilk substitute and essentially</p>	<p>8.3 BCAP considers this is not a comment on the proposed rules but the legislation that controls the marketing of infant and follow-on formula. The BCAP Code must reflect the law. The BCAP Code reflects the relevant provisions of the Infant Formula and Follow-on Formula Regulations 2007 and stakeholders are advised their advertisements must comply with the law.</p> <p>(See also BCAPs response to 8.2)</p>

performs the same function as normal infant formula.

A survey carried out in 2005 by MORI on behalf of UNICEF UK and the National Childbirth Trust found that 60% of the 1000 new mothers and pregnant women interviewed said that they had seen or heard advertising for infant formula in the previous 12 months (the majority on TV or in magazines). Given that advertising outside the health care system is prohibited under the existing Regulations and straightforward advertising for infant formula inside the health care system (permitted by current regulations) is now rare, the advertisements in question must have been for follow-on formula.

A similar survey carried out in 2005 by NOP for the Department of Health found that 39% of the 2000 new mothers and pregnant women interviewed had seen adverts for infant formula, with another 7% saying that they had seen adverts for formula milk but did not know what type of milk was being advertised. A quarter of interviewees thought that there was no difference between infant and follow-on formula, with a further 16% saying that they did not know. This is evidence that confusion between the two products exists in the UK

BCAP has not seen persuasive evidence that would result in the BCAP Code banning all advertisements for follow-on formula. The Department of Health (“DH”) have requested “that any advertising rules must reflect both the spirit and the letter of any EU or domestic legislation in order to provide the strongest possible protection for infants and their mothers.” BCAP considers the BCAP Code and ASA action in this sector address the DH’s concerns.

The ASA is experienced in judging the context of advertisements particularly in light of the fact there are no specific rules on advertisements for infant and follow-on formula in the present Codes. The ASA has investigated a number of complaints where they consider the advertisement did not make sufficiently clear the product being advertised was follow-on formula and not for infants under 6 months, or that formula was equal or superior to breastmilk.

BCAP will await the results of the review presently being carried out by the Food Standards Agency into the controls on Infant formula and follow-on formula: <http://www.food.gov.uk/healthiereating/nutcomm/s/infformreview/>

<p><i>Responses received against BCAP's proposal:</i> International Association for the Study of Obesity and the International Obesity Task force</p>	<p><i>Summaries of significant points:</i></p> <p>8.4 We are concerned that the marketing of any product which may undermine breastfeeding is wrong. Follow-on milks are likely to replace breastfeeding at a time when breastfeeding plus weaning onto solids should be protected. Follow-on milks are breastmilk substitutes and should be controlled as strongly as formula milks and related products, as defined by the WHO-UNICEF International Code on Marketing of Breastmilk Substitutes.</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p>8.4 BCAP considers this is not a comment on the proposed rules but the legislation that controls the marketing of infant and follow-on formula. The BCAP Code reflects the relevant provisions the Infant Formula and Follow-on Formula Regulations 2007 and stakeholders are advised their advertisements must comply with the law.</p> <p>See also BCAP's response to 8.3</p>
<p>National Heart Forum</p>	<p>8.5 We believe that the current provision is inadequate. To ensure the avoidance of confusion, advertising of follow-on formula should be subject to at least the same restrictions as infant formula. In our view, follow-on milks will have the effect of substituting for breastfeeding after 6 months, and thereby are breastmilk substitutes and should comply with all the restrictions applicable to formula milk and all other breastmilk substitutes.</p>	<p>8.5 BCAP disagrees. See BCAPs response to 8.3</p>
<p>Royal College of Midwives</p>	<p>8.6 The RCM believes that exclusive breastfeeding for at least the first six months of life and continued breastfeeding during the first year of an infant's life is the most appropriate method of infant feeding.</p>	<p>8.6 BCAP disagrees. See BCAPs response to 8.3</p>

As with other areas of maternity care, the RCM's aim is to promote informed choice and support women in their chosen method of infant feeding.

The RCM is supportive of the advertising codes including specific rules relating to infant formula and follow-on formula. However, for the reasons set out below, the RCM believes that current restrictions on advertising should go further and also ban the advertising of follow-on formula to the general public.

The RCM is concerned that proposed rule 13.8.1 (*'Advertisements must not confuse between infant formula and follow-on formula'*) will be difficult to enforce. Specifically, the RCM is concerned that many of the infant formula manufacturers use brand recognition tactics to get around the law, which can cause confusion for the public. For example, current TV advertisements for follow-on formula are difficult to distinguish from those for formula milk, and can result in confusion for the public and some health professionals. These advertisements do not breach the law as such, but the packaging and brand names used tend to be identical to those used for infant formula. This can build an impression in parents' minds that the products being advertised are suitable for infants of a younger age. For example, a MORI poll conducted on behalf of UNICEF UK and the National Childbirth Trust in 2005 found that 75% of mothers thought they had seen advertisements for

The ASA is experienced in judging the context of advertisements particularly in light of the fact there are no specific rules on advertisements for infant and follow-on formula in the present Codes. The ASA has investigated a number of complaints where they consider the advertisement did not make sufficiently clear the product being advertised was follow-on formula and not for infant under 6 months or that formula was equal or superior to breast milk.

The BCAP Code does not apply to packaging and brand names.

	<p>infant formula.¹</p> <p>Such concern about advertising follow-on formula has also been raised by the Government's Scientific Advisory Committee on Nutrition (SACN) who have previously suggested that it should be subject to the same advertising restrictions as infant formula.² The RCM also notes that the UK is a signatory to the Innocenti Declaration on Infant and Young Child Feeding³ which urges all governments to fully implement the International Code on the Marketing of Breast Milk Substitute and subsequent World Health Assembly resolutions in their entirety as a minimum requirement.</p> <p>In the situation that advertising for follow-on formula continues, we would like to recommend that the rules around the use of babies in advertisements be strengthened - to prohibit the use of babies in follow-on formula advertisements. This can also confuse the public as to the target market for such products, as it is frequently difficult to discern the age of the baby in these adverts.</p>	<p>BCAP considers this is not a comment on the proposed rules but the legislation that controls the marketing of infant and follow-on formula. The BCAP Code reflects the relevant provisions the Infant Formula and Follow-on Formula Regulations 2007 and stakeholders are advised their advertisements must comply with the law.</p> <p>The ASA routinely investigates complaints about the use of infants in advertisements for follow-on formula. One factor which the ASA will consider is whether the infants used in the advertisement are over 6 months old and will ask for evidence to support that position. The ASA also considers the overall impression of the advertisement and whether, when taking into consideration all the elements of the ad, the audience is likely to be</p>
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1 UNICEF UK Baby Friendly Initiative, Briefing Paper 2009

2 Scientific Advisory Committee on Nutrition (SACN), Comments on the Infant Formula and Follow-on Formula Draft Regulations 2007, accessed online: http://www.sacn.gov.uk/pdfs/position_statement_2007_09_24.pdf

3 The Innocenti Declaration on Infant and Young Child Feeding (2005) first adopted in 1990 and reaffirmed in 2005; declares that actions are necessary to ensure the best start to life for children, to achieve the millennium development goals and the realisation of human rights of present and future generations.

	<p>In addition to the issue of public confusion, it should also be noted that there does not appear to be robust evidence that the use of follow-on formula provides benefits to babies. In particular, the Department of Health does not include follow-on formula in the Healthy Start Scheme as research has not found clear benefits for its use as an alternative to breast milk or infant formula milk.⁴</p>	<p>misled e.g. http://www.asa.org.uk/asa/adjudications/Public/T_F_ADJ_43715.htm</p> <p>An independent panel was set up by the Food Standards Agency to review the effect of the infant and follow-on formula controls, introduced in 2008, on how follow-on formulas are presented and advertised. BCAP will consider its rules and whether further amendments to the Code are necessary following the outcome of that review. http://www.food.gov.uk/healthiereating/nutcomms/infformreview/</p> <p>BCAP has taken into account the position of the Department of Health and Food Standards Agency, both of which acknowledge the need for follow-on formula advertising:</p> <p>“New European Union (EU) legislation, being implemented into law, will ensure that all types of formulae meet the nutritional needs of babies – while ensuring that breastfeeding is not undermined by the marketing and promotion of such products. The Government is committed to encouraging breastfeeding because of the health benefits to mothers and babies. However, not all mothers choose to, or are able to, breastfeed and these new regulations will</p>
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⁴Department of Health, Delivering Health Start: A Guide for health professionals, 2006

		<p>enable them to make more informed decisions about feeding choices for their babies. The Government wants mothers to get information about infant feeding from health visitors and midwives as this is the best way to decide what is best for mother and child.”</p> <p>http://www.food.gov.uk/news/pressreleases/2007/nov/babymilkpress</p>
Tesco	<p>8.7 Respondent considers the Code should include a definition of infant and follow-on formula. Those definitions should be identical to those contained in the Infant Formula Regulations.</p>	<p>8.7 BCAP considers a definition of infant formula and follow-on formula is unnecessary in the Codes. The law clearly defines both. The BCAP Code is not a replacement for the relevant legislation that applies to specific products and cannot reflect every provision in law, doing so would result in a lengthy, cumbersome Code. Broadcasters are required to ensure advertisements they carry comply with the law.</p>

<p>Food Standards Agency</p>	<p>The Agency supports the decision to reflect the infant formula and follow-on formula Regulations 2007 in the codes and in particular to explicitly mention that the advertising of infant formula is prohibited and that advertisements should not confuse between infant formula and follow-on formula. The rules governing the advertising of infant formula and follow-on formula are, however, more extensive than reflected in the amended codes. As currently drafted the text of the codes does not explicitly mention these or make reference to the fact that the Regulations put in place additional controls on the advertising of infant and follow-on formula. These are important controls that both broadcasters and advertisers should be aware of. We would like to see these controls reflected in the codes.</p> <p>The codes refer to The Infant Formula and Follow-on Formula Regulations 2007. These Regulations have now been amended by The Infant Formula and Follow-on Formula (England) (amendment) Regulations 2008. Reference to these Regulations should therefore read “The Infant Formula and Follow-on Formula (England) Regulations 2007, as amended” with equivalent parallel Regulations in Scotland, Wales and Northern Ireland⁵</p>	<p>The BCAP Code cannot reflect every requirement of law. Advertisers have primary responsibility for ensuring their advertisements are legal. The BCAP Code is not a replacement for relevant legislation.</p> <p>BCAP notes the FSA’s comments. BCAP has not been made aware of any significant differences between the Regulations that apply to England, Scotland, Wales and Northern Ireland. The list of legislation that applies to all advertising does include the regulations that apply to Scotland, Wales and Northern Ireland and will be amended accordingly.</p>
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⁵ The Infant Formula and Follow-on Formula (Scotland) Regulations 2007 as amended by the Infant Formula and Follow-on Formula (Scotland) Amendment Regulations 2008 (SSI 2008/322).

The Infant Formula and Follow-on Formula (Wales) Regulations 2007 as amended by the Infant Formula and Follow-on Formula (Amendment) (Wales) Regulations 2008 (SI 2008/W.228).

<p>Question 86:</p> <p>i) Do you agree that BCAP has correctly reflected Article 12(c) of the NHCR in rule 13.6.3 (health claims that refer to the recommendation of an individual health professional)? If your answer is no, please explain why.</p> <p>ii) Given BCAP's policy consideration, do you agree that the Code should allow broadcast food advertisements to include health claims that refer to a recommendation by an association if that association is a health-related charity or a national representative body of medicine, nutrition or dietetics? If your answer is no, please explain why.</p>		
<p><i>Responses received in favour of BCAP's proposal from:</i></p> <p>Advertising Association; ASDA;</p>	<p><i>Summaries of significant points:</i></p> <p>9.1 Respondents consider proposed rule 13.6.3 reflect Article 12(c)</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p>9.1 N/A</p>
<p>Proprietary Association of Great Britain</p>	<p>9.2 We are unsure as to why rule 15.1.1 requires "particular care"? At present, all claims are awaiting sign off from the EC and presumably all require equal care.</p>	<p>9.2 BCAP considers it unrealistic to reflect every type of acceptable health claim and detail the particular authorisation processes attached to them in the Code. Therefore, it considers the paragraph on transitional periods adequately covers the complex situation surrounding health claims and asks stakeholders to take advice on the effect of the NHCR. The BCAP Code cannot</p>

	<p>We are happy with the wording of rule 13.7 as long as the word 'necessary' is interpreted literally. The wording 'must not suggest that it is necessary' sounds very similar to 'must not suggest it would be beneficial'. For example, would the ASA take the view that 'Most people would benefit from calcium supplements' to be in breach of this rule? If the answer is 'yes' then the rule should be reworded. It is not impossible that the EC could approve such a claim.</p> <p>Rule 13.7.1, page 256. The second paragraph is worded 'Only certain groups are likely to benefit from a vitamin or mineral supplement.' It would be better to say 'Only certain groups are likely to have low intakes of vitamins and minerals' as the amended wording would fit better with the</p>	<p>reflect every requirement of the NHCR. BCAP's paragraph on transition periods:</p> <p><i>Depending on the nature of the claim EC Regulation 1924/2006 contains a number of complex transitional periods, including those for health claims which are still being assessed for adoption to the EU list of permitted health claims (and which comply with existing national provisions), and for trademarks or brand names in use prior to 1 January 2005. There is no transition period for disease risk claims, which are prohibited until authorised. BCAP advises advertising industry stakeholders to take advice on the effect of the Regulation.</i></p> <p>See BCAP's response to 7.2</p> <p>BCAP agrees. BCAP understands in some cases the general population is the target group for some dietary supplements, which would allow advertisements for those supplements to make claims for general nutritional benefit.</p> <p>BCAP understands almost all vitamin and mineral claims have now been assessed by EFSA and they have found many claims appropriate for the <u>general population</u>. The Commission may impose some conditions of use for claims before they are finally authorised. BCAP considers:</p>
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paragraph above. Alternatively, 'Only certain groups are likely to have low intakes of vitamins and minerals' could simply be deleted as the rule would make sense without this additional sentence.

'Advertisements may offer vitamin and mineral supplements to certain groups as a safeguard to help maintain good health. If a claim is made for a vitamin or mineral relevant only to a group who is at risk of inadequate intake the advertisement must state clearly the group's likely to benefit from the supplement. ~~Only certain groups are likely to benefit from a vitamin or mineral supplement.~~ They might include:'

- the general misleading provisions (supported by amended rule s 13.7 and 13.7.1);
- the requirement that nutrition and health claims must be used in accordance with their conditions of use as set out by the European Commission and;
- all nutrition and health claims are now regulated under the provisions of Regulation 1924/2006.

are sufficient measures to protect the audience from misleading claims, whilst ensuring compliance with the NHCR.

BCAP's new revised rules on vitamin, mineral and food supplements are as follows:

Vitamins, Minerals and other Food Supplements

BCAP advises advertising industry stakeholders to ensure that claims made for vitamins, minerals and other food supplements are in line with the requirements of Regulation (EC) No 1924/2006 on Nutrition and Health Claims made on Foods.

13.7

Advertisements must not state or imply that a balanced and varied diet cannot provide appropriate quantities of nutrients in general. Individuals must

		<p>not be encouraged to swap a healthy diet for supplementation.</p> <p>13.7.1</p> <p>Nutrition and Health claims for food supplements must be permitted or authorised as provided for at 13.4 above. Advertisements that contain nutrition or health claims must be supported by documentary evidence to show they meet the conditions of use associated with the relevant claim, as specified by the European Commission.</p>
<p>Charity Law Association</p>	<p>9.3 We agree with BCAP's proposal. We are concerned, the health-related charity or national representative body of medicine, nutrition or dietetics must be one which has general respect and acceptance amongst a general body of medical opinion. It is all too easy for such a charity to be registered that might be on the very outer fringes of medicine professing positive medical effects for the eating of what the majority of the medical profession might consider to be absurd substances.</p>	<p>9.3 13.6 These are not acceptable in advertisements for products subject to this Section:</p> <p>13.6.3 Health claims that refer to the recommendation of an individual health professional. Health claims that refer to the recommendation of an association are acceptable only if that association is a health-related charity or a national representative body of medicine, nutrition or dietetics</p> <p>Article 11 allows, but does not directly control, the use of endorsements by national associations of medical, nutrition or dietetic</p>

		<p>professionals and health-related charities. Any health claims, whether expressed or implied, linked to the recommendation or endorsement will be controlled by the NHCR and so must be authorised and listed or refer to relevant authorised and listed claims. All claims will have to meet the conditions of use attached to the relevant claim.</p> <p>Any claims of a medical nature will require the ASA to liaise with the MHRA.</p>
<p><i>Responses received against BCAP's proposal:</i></p> <p>Archbishops Council, Church of England</p>	<p><i>Summaries of significant points:</i></p> <p>9.4 We disagree. The use of health professionals in advertisements is fraught with difficulties. Protecting the public and the integrity of health professions outweighs any benefits of relaxing current restrictions. Referring to recommendations by nationally representative bodies of medicine, nutrition or dietetics is not problematic in that safeguards against abuse are built in to such bodies' policies and regulations. The same may not be true of health-related charities who may wish to be associated with certain advertisements partly in order to raise their own profile.</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p>9.4 BCAP considers its Code must reflect the law. The NHCR prohibits health claims that make reference to the recommendation of individual doctors or health professionals (article 12(c)). Article 11 allows, but does not directly control, the use of endorsements by national associations of medical, nutrition or dietetic professionals and health-related charities. Any health claims, whether expressed or implied, linked to the recommendation or endorsement will be controlled by the NHCR and so must be authorised and listed or refer to relevant authorised and listed claims.</p>
<p>National Heart Forum</p>	<p>9.5 It appears that there are no 'relevant national rules'</p>	<p>9.5 BCAP considers its Code must reflect the law.</p>

that currently apply in the UK and that the proposed revision to the B/CAP code might be construed as such. In the interests of public protection, it is vital that any claims or information presented to consumers should be free of commercial bias and guaranteed to be of the highest scientific quality. We are concerned that the wording of 13.6.3 is open to interpretation and could encourage the creation of 'health-related charities' or 'national representative bodies' for the purpose of fronting commercially-motivated recommendations in marketing communications. We recommend that it should be the Food Standards Agency in consultation with the Scientific Advisory Committee on Nutrition that should – as the appropriate, competent authorities – determine rules around such endorsements. This should not be determined by CAP.

EFSA has the role of assessing the evidence to support nutrition and health claims. This is not the role of the ASA or BCAP.

BCAP has taken advice from the Food Standards Agency in drafting the rules that reflect Article 11 and 12(c) of the NHCR. BCAP has no remit over the creation of health-related charities or national representative bodies, however, BCAP considers any health claims, whether expressed or implied, linked to the recommendation or endorsement will be controlled by the NHCR and so must be authorised and listed or refer to relevant authorised and listed claims.

Article 11

National medical associations and health-related charities

In the absence of specific Community rules concerning recommendations of or endorsements by national medical associations and health-related charities, relevant national rules may apply in compliance with the provisions of the Treaty.

Article 12

Restrictions on the use of certain health claims

The following health claims shall not be allowed:

(c) claims which make reference to recommendations of individual doctors or health professionals and other associations not referred to in Article 11.

Question 87:

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules included in the

proposed Food, Dietary supplements and Associated Health and Nutrition claims Section are necessary and easily understandable? If your answer is no, please explain why.

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Food, Dietary supplements and Associated Health and Nutrition claims rules that are likely to amount to a significant change in advertising policy and practice, are not reflected here and should be retained or otherwise be given dedicated consideration?

iii) Do you have other comments on this section?

<i>Responses received from:</i>	<i>Summaries of significant points:</i>	<i>BCAP's evaluation of those points and action points:</i>
Advertising Association; ASDA; An organisation requesting confidentiality; Charity Law Association	<p>10.1 Respondents agree that BCAP's proposed rules in the Food, Dietary Supplements and Associated Health and Nutrition claims Section are necessary and understandable. Respondents cannot identify any changes (apart from those in Annex 2) that would amount to a change in policy and practice. Respondent have no other comments on this section.</p>	<p>10.1 N/A</p>
Department of Health	<p>10.2 The Food Standards Agency will be commenting on compliance with EU regulations on dietary supplements and the use of nutrition and health claims.</p> <p>In the overview document BCAP and CAP state that <i>"new strict rules governing food and soft drink advertising to children came into force in 2007.</i></p>	<p>10.2 BCAP refers readers to its published opinion regarding the difference between the TV, Radio and Non-broadcast rules when CAP and BCAP launched the food advertising to children restrictions in 2007.</p> <p>TV: http://www.ofcom.org.uk/consult/condocs/foodad</p>

BCAP and CAP propose to maintain those restrictions". The BCAP and CAP rules differ in that BCAP uses the nutrient profile model developed by the Food Standards Agency to identify healthier foods that can be advertised to children using certain techniques eg cartoons, celebrities, whereas the CAP rules for non-broadcast media apply to all food except fruit and vegetables. This has meant that many companies who have reformulated products to be able to advertise them on TV using techniques that appeal to children are unable to do so in other media.

We would like consistency between advertising rules for all media and for advertisers to be able to advertise healthier food to children in a way that will appeal to them. We are therefore disappointed that CAP has not reconsidered the use of a tool to differentiate between healthier and less health food at this stage and would like to suggest that this is reviewed in 2010, at the same time that Ofcom reviews the impact of TV advertising restrictions.

[s_new/bcap.pdf](#)

Radio: <http://www.cap.org.uk/Media-Centre/2007/Radio-advertising-food-rules-announced.aspx>

Non-broadcast: <http://www.cap.org.uk/Media-Centre/2007/New-food-rules-for-nonbroadcast-ads.aspx>

(For CAP's response to the Department of Health comments please see CAP's evaluation of its Food, Dietary Supplements and Associated Health and Nutrition claims Section.)

Research conducted for Ofcom by Professor Livingstone concluded that TV advertising, combined with TV viewing in general, has a modest effect on children's food preferences. BCAP and Ofcom considered that to impose the same level of restrictions on radio was disproportionate given the difference in audience and ability to target children through that medium.

BCAP also looks forward to Ofcom's final review of the HFSS product TV advertising restrictions in 2010. If, in light of Ofcom's final review, it concludes major changes to the HFSS product TV advertising rules are required, BCAP will then consider the case for conducting another consultation on it present rules.

<p>British Heart Foundation</p>	<p>10.3 The impact of television adverts on food choices has been shown, as has the association between the proportion of overweight children and the number of food advertisements shown each hour during children’s television.⁶ The Hastings Review⁷ found that food promotion affects preferences not only at brand level (e.g. persuading people to choose one burger restaurant over another) but also, more importantly, at category level (e.g. persuading people to eat more burgers instead of fruit).</p> <p>Whilst Hastings found there was a proven “modest direct” impact on children from advertising, it is clear that the true scale of advertising’s indirect impact on children’s food choices is hard to quantify. However, we consider this indirect link to be significant. Research conducted by the National Children’s Bureau with young people confirms that there are a number of marketing methods which young people themselves recognise help to drown out healthy eating messages with unhealthy ones⁸.</p>	<p>10.3 BCAP does not dispute TV advertising has a modest direct effect on children’s food preferences, nor does it dispute the fact that there are multiple factors that account for childhood obesity. TV viewing and advertising is one among many influences on children’s food choices. Social, environmental, cultural factors all play a complex role which is yet to be fully understood. BCAP is mindful of the Better Regulation Principles and particularly that regulation should be proportionate, transparent and targeted where it is needed. BCAP considers its measures meet those principles, as does Ofcom which retains its role as the backstop regulator for broadcast advertising.</p> <p>BCAP considers the conclusions of the report recommend (amongst others factors that are without BCAPs remit) that advertising and promotion of less healthy products should be restricted. The techniques that were found to be attractive to children e.g. promotional offers, celebrities etc have been banned on radio unless the products are fresh fruit and vegetables. Those restrictions were introduced in 2007.</p>
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6 Halford and Boyland (2007) *Missing the target – Changing children’s food preferences*; University of Liverpool

7 Hastings et al. (2003) Review prepared for the Food Standards Agency. Centre for Social Marketing: The University of Strathclyde

8 National Children’s Bureau (2006) *Children’s views on non-broadcast food and drink advertising*, Report for the Office of the Children’s Commissioner

The BHF is not aware of any evidence to suggest that non-broadcast methods of marketing are less effective than broadcast marketing and advertising. Therefore, we believe it is logical and right that standards covering non-broadcast marketing should be consistent with, and as strong as, television broadcast regulation and standards.

The follow up report, *How Parents Are Being Misled* highlights the tactics of food companies in marketing unhealthy foods aimed at children to their parents. The tactics employed included using

BCAP is not aware of any evidence to suggest the restrictions on radio are inadequate. Given the restrictions on TV are based on: persuasive evidence that suggests television advertising has a modest direct effect on children's (age 2-11) food preferences (Livingstone review 2006); the reach and nature of television; better regulation principles in particular that regulation should be proportionate, transparent and targeted where it is needed, BCAP is not proposing to amend its radio rules. Ofcom agrees the radio rules are sufficient given the nature of the medium.

The ASA carried out compliance surveys in 2007 and 2008 which show a high rate of compliance and of the 58 food product advertisements aired on radio, there were no recorded breaches of the radio rules: "Broadcast ads recorded a near-perfect compliance record. That result is testament to the way in which advertisers and their agencies have adapted to the new rules and to the good work of Clearcast and the RACC, who help ensure that broadcast ads meet the BCAP Codes' requirements." (<http://www.asa.org.uk/Resource-Centre/Reports-and-surveys.aspx>).

Any nutrition or health claims used today must comply with relevant legislation and must comply with the Codes. All claims in

	<p>nutrition claims (e.g. 'good source of calcium'); health claims (e.g. 'good for growing kids'); promotions; endorsements; and emotional insight (e.g. tapping into parent's guilt about their busy lifestyles)⁹. Copies of both these reports are included with our consultation response.</p>	<p>advertisements require substantiation and must not mislead.</p> <p>Regarding nutrition and health claims in the future, the NHCR ensures nutrient profiles are established and only claims that meet the relevant criteria can make nutrition or health claims. By 2011 it will depend on the extent to which a product complies with the profile what claims can be made. A product that meets the profile will be permitted to make nutrition and health claims. If it fails on one nutrient, no health claims will be permitted and the nutrient it fails in will have to be made explicit. If the product fails on more than one nutrient, no health or nutrition claims will be permitted. Article 4 of the NHCR defines the process: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_012/l_01220070118en00030018.pdf</p>
	<p><u>HFSS advertising</u></p> <p>The consultation document acknowledges that it has not been possible to take the findings from Ofcom's recent review of the effectiveness of HFSS food advertising rules into account during the revision process. It would be useful to know how these will now be incorporated.</p>	<p>In 2010 Ofcom will complete its review of the HFSS advertising restrictions. That review will take into account data from 2009. BCAP's consultation document has referenced but not taken into account relevant ongoing reviews or reviews that have concluded too late in the day to allow BCAP sufficient time to consider their findings. BCAP will consider whether action is necessary after a proper consideration of those reviews' findings.</p>

⁹ How parents are being misled: a campaign report on children's food marketing, British Heart Foundation, 2008

(& National Heart Foundation; International Association for the Study of obesity and the International Obesity Task force)	<p>The BHF believes that Ofcom’s current restrictions on broadcast advertising of HFSS foods do not go far enough as the majority of children’s television viewing (68.9%) is outside dedicated children’s programming¹⁰. We therefore maintain our call, alongside organisations including Which?, the British Medical Association and Cancer Research UK, for a complete restriction on broadcast advertising of HFSS foods before 9pm.</p>	<p>Ofcom explored the option of a 9pm ban on HFSS product advertisements http://www.ofcom.org.uk/consult/condocs/foodads/summary/ They concluded: “... the exclusion of HFSS advertising before 9pm would not meet Ofcom’s regulatory objectives (see paragraph 1.14 above), and that it is therefore not appropriate to proceed with this option”.</p>
	<p><u>Licensed characters vs equity brand characters</u> The BHF believes that the distinction between licensed and equity brand characters (those created by companies to promote a particular brand or product) within the BCAP code continues to allow an unacceptable loop hole for food companies to use unwelcome tactics to advertise unhealthy foods to children.</p> <p>A recent survey from Which? showed that of the 19 most popular equity brand characters, none was used solely to promote healthy products¹¹. Equity brand characters should be subject to the same restrictions as licensed characters and prevented from being used to sell unhealthy foods to children.</p> <p>The BHF believes the current restrictions concerning food marketing to children do not go far</p>	<p>BCAP has seen no convincing evidence to change its position. BCAP will reconsider this position if Ofcom’s review concludes otherwise.</p> <p>BCAP, CAP, the ASA and OFCOM carry out regular reviews of the Codes and act where</p>

10 Ofcom (2006) *Television Advertising of Food and Drink Products to Children: Options for new restrictions; Research annexes 9-11*

11 Which? (2008) *The Cartoon Villains are still getting away with it*. London: Which?

	<p>enough. The rules must be regularly reviewed and improved to limit the marketing impact of HFSS foods on children. The BHF is aware of a number of forthcoming reports which may contribute to the evidence base and must be considered in revising the code. These include reports from the Digital Media Group, Digital Inclusion Task Force, findings from the Department for Children Schools and Families' Commercialisation of Childhood Panel and the European Commission review of the Directive on Unfair Commercial Practices. The BHF would like to know how these are being considered and how they will inform the current review.</p>	<p>required. BCAP considers amendments to the Codes must be evidence based proportionate and targeted where necessary.</p> <p>BCAP's consultation document has referenced but not taken into account relevant ongoing reviews or reviews that have concluded too late in the day to allow BCAP sufficient time to consider their findings. BCAP will consider whether action is necessary after a proper consideration of those reviews' findings.</p>
Alliance Boots	<p>10.4 We have particular concerns about the requirements in 13.7.1 of the old Code which have not been addressed in the review. The requirements of that provision are that vitamins should only be advertised if in the advertisement it is made clear the groups likely to benefit from the supplement. The Code then goes on to indicate a list of certain groups that might be included in such a benefit claim. Our problem is that particularly, with the pre-clearance activity, the people responsible for reviewing this sort of advertising prior to airing apply this list of groups as a definitive requirement and often insist that the vitamins must fit into one of the categories listed within the Code. That is not helpful and in fact makes things very difficult when vitamins are suitable for a wide range of groups and the advisers are reluctant to accept</p>	<p>10.4 BCAP considers this is not a comment on the proposed Code, but its application. The list in the present Code of groups likely to benefit, is not exhaustive, but indicative of those sectors in the population that have been proven to benefit from a particular supplementation to their diet.</p> <p>See BCAP's response to 9.2</p>

	<p>a more generic statement such as “food supplements are not intended to replace a balanced and varied diet”. Again the problem is not really with the Code, but with the way it is sometimes arbitrarily applied.</p> <p>The proposed rule changes in this section are a brave attempt to reflect the high volume of change that is going on in this area. However what they succeed in doing is indicating how difficult it is to draft rules to reflect law in a way that will be useable for a long time to come.</p> <p>In fact some of the rules proposed in particular 15.11 [BCAP: 13.8] do not follow our understanding of the legal requirements and the same could be said with some of the other detail within the sections. We would therefore strongly suggest that this section is either completely revamped and again written in a principle based way which avoids the need to deal with the detail or removed completely as the matters which the area seeks to control are covered by the existing regulatory framework, which it would be better if CAP sought to compliment, rather than attempting to apply rules which at this current moment in time are undergoing a rapid rate of change.</p>	<p>BCAP considers users of the Code require more detailed guidance than basic principles. The NHCR imposes specific requirements on advertisers and BCAP considers those requirements must be reflected in the Code to help broadcasters ensure the advertisements they carry comply with the law. BCAP has had an overwhelming response from stakeholders to reflect the requirements of the NHCR, and to aid users has chosen to reflect the provisions.</p> <p>In the absence of Alliance Boots comments on how proposed rules 15.11 and 13.8 (Infant formula and Follow on formula restrictions) do not follow their understanding of the relevant legal requirements, BCAP cannot provide any further policy consideration other than that outlined in the consultation document.</p>
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<p>Bayer Health care; Wyeth Consumer Healthcare; Vifor Pharma Potters</p>	<p>10.5 Note the Code has been updated to bring it into line with the NHCR and support the proposals to:</p> <ul style="list-style-type: none"> - extend the list of target groups to whom vitamins and minerals can be advertised. The list is now much more closely aligned to current research and offers far more scope to enable companies to target supplements to those who are most likely to benefit. - Make it clear that the target groups only apply to claims which are relevant to people who would otherwise have a sub-optimal intake of that nutrient. This allows for the possibility of the European Commission approving claims relating to a higher intake of a particular nutrient for a particular function. - permit claims that a food supplement can elevate mood or enhance normal performance if they are approved by the European Commission. 	<p>10.5 BCAP welcomes the comments from Bayer Healthcare, Wyeth Consumer Healthcare and Vifor Pharma Potters. See also BCAP's response to 9.2.</p>
<p>An organisation requesting confidentiality</p>	<p>10.6 Draft rule 13.4.3 The first statement of draft rule 13.4.3 states:</p> <p>“If a food product is a good source of certain nutrients that does not justify a generalised claim of a wider nutritional benefit”.</p> <p>We are unclear about what this statement is</p>	<p>10.6 BCAP agrees. BCAP will instead reflect the requirements of Article 10(3): http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_012/l_01220070118en00030018.pdf</p> <p>BCAP's final wording for the rule is: 13.4.3 The fact that a food product is a good source of</p>

	<p>intended to achieve in practice and, moreover, question whether it is relevant given the provisions of the NHCR and the publication of positive lists of nutrition and health claims? It would be helpful to replace this statement with a more specific statement reflecting Article 10(3) of the NHCR, which is a section of the Regulation that will be relevant to advertising.</p> <p>Draft rule 13.4.3 continues: “Claims for the presence, absence or reduced content of a nutrient in a product must be able to show a beneficial nutritional or physiological effect as accepted by generally accepted scientific evidence.”</p> <p>Claims about the presence, absence or reduced content of a nutrient are nutrition claims controlled by a positive list within the annex of the NHCR, which in itself ensures the benefits are significant and real, otherwise EFSA and the Commission would not have included them within the annex. Therefore this statement is all but redundant as that particular responsibility no longer rests with the advertiser (there is one situation where it might still be relevant; see response to Q80 about 13.5.1) so we recommend that is deleted or in some way combine it with draft rule 13.5.1.</p>	<p>certain nutrients does not justify generalised claims of a wider nutritional benefit and should be considered in the context of a balanced diet or lifestyle or both. <u>References to general benefits of a nutrient or food for overall good health or health-related well-being are acceptable only if based on a relevant authorised claim.</u> Claims for the presence, absence or reduced content of a nutrient in a product must be able to show a beneficial nutritional or physiological effect as accepted by generally accepted scientific evidence.</p>
	<p>The last sentence of this draft rule states: “References to energy should not confuse its</p>	<p>BCAP agrees. BCAP considers the NHCR provides a new, robust framework for nutrition and health claims that refer to energy. BCAP</p>

	<p>scientific meaning, calorific value, with its colloquial meaning, physical vigour”.</p> <p>“Calorific value” is not just the “scientific meaning” of the word energy, it is also the legal definition attributed to “energy” in Article 2(4) of the NHCR, which is consistent with the Food Labelling Regulations’ use of that word. Similar wording to the above in the current BCAP Code has created confusion and tension between the industry and the pre-clearance bodies, which have cited that wording as prohibitive to the appearance of energy claims on television and radio. We believe the rule was not intended to create such a prohibition and that interpretation is highly contentious given the definition of energy in the NHCR and the development of the positive lists.</p> <p>You will be aware that section 67 of the FSA’s guidance on the NHCR acknowledges that energy claims are within the remit of the Regulation and states that, in some cases, claims might be considered nutrition claims; in other cases they might be considered health claims. That is a reasonable stance and might not be inconsistent with the energy example in 13.4.2.</p>	<p>understands claims will have conditions of use attached which advertisers will have to prove they have met before using such claims.</p> <p>BCAP considers the intention of the original rule was to prevent misleading claims. The NHCR shares a similar principle (article 3a) which is reflected in rule 13.4.2:</p> <p>13.4.2</p> <p>Advertisements that contain nutrition or health claims must be supported by documentary evidence to show they meet the conditions of use associated with the relevant claim. Advertisements must not give a misleading impression of the nutrition or health benefits of the product as a whole and factual nutrition statements should not imply a nutrition or health claim that cannot be supported. Claims must be presented clearly and without exaggeration.</p>
<p>The Health Food Manufacturers’ Association</p>	<p>10.7</p> <p>We would raise two points as follows:</p> <p>In our opinion, use of the term ‘Dietary Supplements’ in the header and throughout the</p>	<p>10.7</p> <p>BCAP agrees. BCAP proposes:</p> <p>‘Vitamins, Minerals and other Food Supplements’</p>

	<p>section is not correct from a legislative viewpoint and may cause confusion. The use of the term 'dietary supplement' is not in accord with relevant UK/EU legislation relating to 'food supplements'; EC Directive 2002/46/EC and The Food Supplements Regulations 2003. The term 'dietetic/dietary' is reserved for certain foods for particular nutritional uses (ref FLR Schedule 8 Part</p> <p>Page 258 of document, under heading Food and Drink Product Advertising to Children - final sentence on page, including reference to 13.4. In our opinion, neither this sentence nor 13.4 allows for the limitations imposed by nutrient profiling in the NHCR. Surely it is unlikely under the NHCR Art 4 that health claims and possibly also nutrition claims will be permitted for products assessed as HFSS, although this sentence appears to indicate that such claims may be made for HFSS in advertisements.</p>	<p>Once nutrient profiles are established, the BCAP Code will need to be updated to reflect the new regime. Until that point, BCAP must continue to apply the Food Standards Agency Nutrient Profiling Model to those TV advertisements that use techniques such as licensed characters etc.</p>
<p>International Association for the Study of Obesity and the International Obesity Task force</p>	<p>10.8 As with the Ofcom scheduling rules, the BCAP content rules should explicitly offer protection to all children under 16.</p> <p>There should be consistency in the nature of advertising controls, and do not agree that radio rules should be substantively different from TV rules within a single BCAP code.</p>	<p>10.8 BCAP considered this issue when the food advertising to children rules were introduced in 2007. To read their response go to: http://www.ofcom.org.uk/consult/condocs/foodads_new/bcap.pdf (page 25)</p> <p>BCAP considers TV advertising is different to advertising in other media. Research conducted for Ofcom by Professor Livingstone concluded that TV advertising, combined with TV viewing in</p>

		<p>general, has a modest effect on children's food references. BCAP considered that that combination is simply not relevant to radio. Television provides dedicated children's channels and programming slots that attract an almost exclusive or disproportionately high child audience. The same cannot be said for radio. See also BCAP response to this issue in 2007 when the radio rules were launched: http://www.cap.org.uk/Media-Centre/2007/Radio-advertising-food-rules-announced.aspx</p>
National Heart Forum	<p>10.9 Disagree with BCAP's justifications given under 15.10 for why restrictions equivalent to the TV food advertising rules should not apply in other media. The argument that TV rules should be treated differently because of "TV's place in the family home" would, in our view suggest that other media "in the family home" should attract similarly, robust (not weaker) regulation including radio, magazine and press advertising and the internet. Arguably, the opportunity for mediation by parents is particularly low in the case of internet marketing communications to children when studies show that children are very likely to be watching the screen alone.</p>	<p>10.9 See BCAP's response to 10.2</p>
Cambridge Manufacturing	<p>10.10 While we agree that rules 13.6 and 13.6.5 are a</p>	<p>10.10</p>

Company	<p>correct interpretation of the requirements of the NHCR, we question why these rules apply to food products but not equally to non-food products such as slimming clubs. The purpose and advertised intent of food products is the same as for non-food products, and so the fact that the rules do not apply to both equally, gives the non-food products a commercial advantage over food products. We see no reason why the same rules should not be applied to all weight loss products/programmes equally.</p>	<p>13.6</p> <p>These are not acceptable in advertisements for products subject to this Section:</p> <p>13.6.5</p> <p>Health claims that refer to a rate or amount of weight loss</p> <p>BCAP considers there are specific rules and sections that adequately cater for the harm the NHCR seeks to address, in particular misleadingness. The NHCR is a specific piece of legislation that aims to control nutrition and health claims in relation to food products. The central principles of the NHCR are also reflected in the Code elsewhere e.g. misleadingness, substantiation, social responsibility, the need to reflect a healthy amount of weight loss (i.e. claims of 'fast' or 'rapid' are unacceptable) etc.</p>
British Retail Consortium Consumer Policy Group	<p>10.11</p> <p>We believe it is imperative that all the different transitional periods, some of which are up to 15 years long, are somehow accurately reflected in the Code.</p> <p>While it is very important that the body of the Regulation is correctly interpreted into the Code, we would at all cost like to try to avoid unnecessary restrictions or challenges because the legal transitional periods have not been taken into account.</p>	<p>10.11</p> <p>The BCAP Code cannot reflect every legal provision. Advertising stakeholders are advised to seek legal advice on the effect of the NHCR. See also response to 1.4</p>

Which?	<p>10.12 Support the inclusion of the provisions of the Regulation within the review of the CAP and BCAP Codes as they are a legal requirement. Acknowledges the complex transition periods and lack of established nutrient profiles. We consider that makes it difficult to be categorical within the Codes at this stage and means that they may need to be updated again shortly to reflect the legal situation. Therefore agree with the proposed wording which advises advertising industry stakeholders to take advice on the effect of the Regulation on their products and associated health claims.</p>	<p>10.12 BCAP welcomes the comments from Which? and agree, the Codes must reflect the law. However, the Codes are not a replacement for relevant legislation and stakeholders are advised to seek advice on the effect of NHCR.</p>
	<p>10.13 Concerned that no reference is made to Articles 4, 5, 6 and 7; these also need to be addressed.</p> <p>Article 4 establishes conditions for the use of nutrition and health claims in the form of nutrient profiles.</p>	<p>10.13 BCAP will amend the Code when Nutrient Profiles are established. BCAP understands the deadline set out in Article 4(1) regarding nutrient profiles has lapsed. See also BCAP's response to 7.3</p>
	<p>10.14 Article 5 establishes general conditions i.e. the conditions that have to be met for health and nutrition claims to be permitted (e.g. that the nutrient or other substance for which the claim is made is contained in the final product in a significant quantity or is in a form that is available to be used by the body).</p>	<p>10.14 BCAP considers this requirement is reflected in rule:</p> <p>13.4.2 Advertisements that contain nutrition or health claims must be supported by documentary evidence to show they meet the conditions of use associated with the relevant claim. Advertisements must not give a misleading impression of the nutrition or</p>

	health benefits of the product as a whole and factual nutrition statements should not imply a nutrition or health claim that cannot be supported. Claims must be presented clearly and without exaggeration.
10.15 Article 6 explains the level of scientific substantiation required for nutrition and health claims.	10.15 Neither BCAP nor the ASA will review the scientific evidence to support nutrition or health claims. That function falls within the remit of EFSA.
10.16 Article 7 requires nutrition information to be provided if a nutrition or health claim is made.	10.16 BCAP considers Article 7 applies to labelling and packaging only. That is not within the remit of the BCAP Code. BCAP refers stakeholders the FSA guidance (page 26): http://www.food.gov.uk/foodindustry/guidancenotes/foodguid/192420006complianceguide
10.17 We appreciate the enormous amount of debate that there has already been around this issue and recognise that CAP and BCAP have responded by bringing in new rules, however, we are concerned that the changes do not go far enough. Advertising and broader marketing restrictions on HFSS foods targeted at children are just one of many measures that need to be included within a broader strategy to tackle the high rates of obesity and diet-related disease in the UK. This has been recognised within government policy, including for example 'Healthy Weight' Healthy Lives' the obesity strategy for England which sets out a range of areas where action is needed, including broadcast and non-	10.17 BCAP is not aware of any evidence to suggest the restrictions on radio or TV are ineffective. Given the restrictions on TV are based on: persuasive evidence that suggests television advertising has a modest direct effect on children's (age 2-11) food preferences (Livingstone review 2006); the reach and nature of television; better regulation principles in particular that regulation should be proportionate, transparent and targeted where it is needed, BCAP is not proposing to amend its rules. Ofcom consider the restrictions in radio are sufficient and do not warrant further amendment. BCAP will await the findings of the

<p>broadcast marketing to children. When dealing with a problem that requires a multi-faceted solution, it is all too easy to question the validity of taking action in specific areas that fall within a broader strategy. But failure to take effective action across the many barriers that make it difficult to make healthier choices, will limit the overall public health outcome. This applies as much to action on school meals, food labelling, product labelling – and to the many actions needed to make it easier to be more physically active – as it does to food marketing to children. We consider that there is a need to go further in relation to both broadcast and non-broadcast marketing.</p>	<p>2010 Ofcom review to establish whether the BCAP TV restrictions require further amendment. BCAP considers any action it takes above and beyond the restrictions already in place, must be evidence based to ensure their outcome is effective.</p> <p>(For CAP's response please see the CAP evaluation of responses document).</p>
<p>10.18 Despite the new Ofcom scheduling restrictions and the revised BCAP content rules, HFSS foods can still be advertised using child-appealing techniques such as child-friendly cartoon characters during the programmes BARB data show younger and older children watch in the greatest numbers during family viewing time in the evenings. We therefore hope that the review of the BCAP Code can be used as an opportunity to introduce additional restrictions on the use of child-appealing creative techniques. We cannot, for example, see how the differentiation between licensed and brand-equity cartoon characters can be justified. We are also concerned that even where specific restrictions on certain techniques are included, they only apply to younger children (e.g. the use of celebrities) although Ofcom has recognised the need to</p>	<p>10.18 See BCAP's response to 10.17</p>

(& National Heart Forum)	<p>protect children up to 16. We support the proposed changes to make the BCAP and CAP wording consistent.</p>	
	<p>10.19 We are, however, concerned that some of the detailed notes previously included within the BCAP Code have been removed. This includes notes clarifying the general requirement that ‘Advertisements must avoid anything likely to condone or encourage poor nutritional habits or an unhealthy lifestyle in children’. The additional advice, such as ‘portion sizes or quantities of food shown should be responsible and relevant to the scene depicted, especially if children are involved’ has been removed which in our view further weakens the BCAP Code leaving the general requirement even more open to different interpretations.</p>	<p>10.19 BCAP considers those guidance notes that were interpreted more like rules by stakeholders and the ASA, have been included in the proposed BCAP Code. For example, the highlighted text is guidance note (4) to rule 8.3.2 in the present BCAP Code. The proposed BCAP Code now incorporates this requirement in the rule.</p> <p>13.9.4 Advertisements must not encourage children to eat more than they otherwise would.</p> <p>The notion of excessive or irresponsible consumption relates to the frequency of consumption as well as the amount consumed.</p> <p>The guidance that supported the rules in the present Code still exists and will be available for stakeholders on the CAP website.</p>
	<p>10.20 The changes that are needed in order to give consumers greater confidence that food advertisers are taking a responsible approach to the way they target their products at children are: > The content rules tightened to extend the HFSS food restrictions to children up to 16. > The scope of techniques used to target children extended so that child appealing techniques</p>	<p>10.20 The new rules do protect all children, defined as persons under the age of 16. The rules ensure that marketing communications do not condone or encourage poor nutritional habits or an unhealthy lifestyle in children. For example, advertisements should not:</p>

cannot be used to target children during programmes that they are most likely to be watching (e.g. all cartoon characters).

- encourage excessive consumption or attitudes associated with poor diets- place unfair pressure on children to buy products or ask others to purchase products on their behalf

- encourage children to eat or drink a product only to take advantage of a promotional offer.

BCAP has created supplementary rules to protect further what the Government recognises as the most vulnerable age group – primary school children. Those rules ban the use of celebrities and licensed characters and promotional offers in certain food or drink advertisements directly targeted at primary school and pre-school children.

BCAP is not aware of any evidence to suggest the restrictions on radio or TV are ineffective. Given the restrictions on TV are based on: persuasive evidence that suggests television advertising has a modest direct effect on children's (age 2-11) food preferences (Livingstone review 2006); the reach and nature of television; better regulation principles in particular that regulation should be proportionate, transparent and targeted where it is needed, BCAP is not proposing to amend its rules. Ofcom considers the restrictions in radio are sufficient and do not warrant further amendment. BCAP will await the findings of the 2010 Ofcom review to establish whether the

		BCAP TV restrictions require further amendment. BCAP considers any action it takes above and beyond the restrictions already in place, must be evidence based to ensure their outcome is effective.
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