

The regulation of nutrition and health claims made on foods in TV and radio advertisements

BCAP Consultation Document

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This document sets out proposals to bring the Broadcast Committee of Advertising Practice (BCAP) TV and Radio Advertising Standards Codes (the Codes) into line with Regulation EC 1924/2006 on nutrition and health claims made on foods (NHCR).

BCAP welcomes feedback on the proposed amendments to the present Codes. Please see page 27 for information on responding to this consultation.

The consultation ends at **5.00pm on 16 February 2009**.

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Section 1

Executive Summary

New European legislation called the Regulation EC No 1924/2006 on nutrition and health claims made on foods (the NHCR) 2006 came into force on 1 July 2007. The NHCR is the first piece of specific legislation to deal with nutrition and health claims made on foods and seeks to protect consumers from misleading or false claims.

The present BCAP Radio Advertising Standards Code and the BCAP TV Advertising Standards Code (the BCAP Codes) are generally consistent with the NHCR but, to the extent that any rules are inconsistent, the provisions of the NHCR take precedence.

BCAP intends this consultation as an interim measure to help identify and accurately correct inconsistencies between the present BCAP Codes and the NHCR. BCAP proposes the minimum number of changes necessary to ensure that the present Codes do not allow practices that are explicitly prohibited by the NHCR and do not unduly restrict the use of nutrition or health claims that are permitted by the NHCR.

Separately, BCAP will very soon consult on its general review of the BCAP Radio Advertising Standards Code and the BCAP TV Advertising Standards Code, "The BCAP Codes Review". The BCAP Codes Review will take into account decisions reached in this consultation and it is likely to include proposals for new rules that will help broadcasters to comply with the general and specific provisions of the NHCR.

In proposing to make now the minimum number of changes necessary to ensure consistency with the NHCR, BCAP acknowledges that the updated Codes will not explicitly reflect some of the general or specific provisions of the Regulation that are relevant to broadcast advertisements. BCAP therefore encourages broadcasters to take advice on the effect of the regulation and to consult the Food Standards Agency's Guidance to Compliance with Regulation (EC) 1924/2006 on Nutrition and Health Claims on Foods, which is available at www.food.gov.uk. (The Guidance details the number of complex transitional provisions that apply to the NHCR.) Broadcasters are reminded that advertisements that they carry must comply with the law and that that must be a condition of acceptance. BCAP's proposed approach has the benefit of ensuring that the present Codes are updated to ensure consistency with the NHCR and that minimum disruption is caused to stakeholders.

This consultation seeks stakeholders' opinions on whether BCAP's proposed approach ensures consistency with the NHCR. The NHCR can be found at:

[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R1924R\(01\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R1924R(01):EN:NOT)

Section 2

Introduction to BCAP and the ASA

The Broadcast Committee of Advertising Practice

The Broadcast Committee of Advertising Practice (BCAP) is the regulatory body responsible for maintaining the BCAP Radio Advertising Standards Code and the BCAP TV Advertising Standards Code (the BCAP Codes) under a contracting-out agreement with the Office of Communications (Ofcom).

Ofcom has statutory responsibility, under the Communications Act 2003, for maintaining standards in TV and radio advertising. Ofcom entrusted BCAP and the ASA with the regulation of broadcast advertisements in 2004 in recognition of CAP and the ASA's successful regulation of non-broadcast advertisements for over 40 years and in line with better regulation principles.

The BCAP Codes regulate all advertisements on TV channels and radio stations licensed by Ofcom, including teleshopping channels and any additional TV service (including TV text services). The BCAP Codes are enforced against Ofcom-licensed broadcasters.

BCAP members include broadcasters and trade associations representing advertisers, broadcasters and agencies. BCAP must seek advice on proposed Code changes from an expert consumer panel, the Advertising Advisory Committee (AAC). In accordance with section 324 of the Communications Act 2003, BCAP must consult on proposed Code changes. BCAP aims to ensure that its rule drafting is transparent, accountable, proportionate, consistent and warranted, in accordance with the Communications Act 2003. Ofcom must approve Code changes before BCAP implements them in its Codes.

The Advertising Standards Authority

Through its broadcast arm, the Advertising Standards Authority (ASA) is the independent body responsible for administering the BCAP Codes so that all TV and radio advertisements are legal, decent, honest and truthful. The ASA receives and investigates complaints from the public and industry. Decisions on investigated complaints are taken by the independent ASA Council. The ASA Council's adjudications are published on the ASA's website, www.asa.org.uk, and made available to the media. An Independent Review Procedure exists for interested parties.

If the ASA Council upholds a complaint, the advertisement must be withdrawn or amended. BCAP conducts compliance, monitoring and research to enforce the ASA Council's decisions. In the event of serious or repeated breaches of the

BCAP Codes, the ASA can refer the licensee concerned to Ofcom, which can invoke statutory sanctions. But that is rarely necessary.

The ASA's work in regulating broadcast advertisements is funded by a levy administered by BASBOF¹ on the cost of advertising space. BASBOF operates independently of the ASA, and that means there is no question of funding affecting the ASA's decision-making.

Information about BCAP and the AAC can be accessed at www.cap.org.uk, which includes copies of the present BCAP Codes. Information about the ASA is available at www.asa.org.uk.

¹ The Broadcast Advertising Standards Board of Finance (BASBOF, www.basbof.co.uk).

Section 3

Regulatory framework for nutrition claims and health claims made on foods in broadcast advertisements

The Law

Regulation EC No 1924/2006 on nutrition and health claims made on foods (the NHCR) came into force on 1 July 2007. The NHCR is the first piece of specific legislation to deal with nutrition and health claims made on foods and seeks to protect consumers from misleading or false nutrition and health claims. The NHCR harmonises legislation across the European Community by placing controls on the use of nutrition and health claims in the advertising, labelling and presentation of all foods, including drinks and food supplements. For natural mineral water, water, and foods for particular nutritional uses, the NHCR works in conjunction with specific labelling controls already in use.

Article 1 of the NHCR states that the Regulation applies to foods, including supplements, sold directly to the consumer and to foods intended for supply to restaurants, hospitals, schools, canteens and other mass caterers. It applies to food ready for consumption in accordance with manufacturers' instructions and to claims made in a commercial context only; that obviously includes broadcast advertisements.

Before 1 July 2007, legal provisions relating directly or generally to the control of nutrition and health claims made on foods could be found in:

- The Food Safety Act 1990 (as amended), which make it an offence to falsely describe a food or mislead about its nature, substance or quality.
- The Food Labelling Regulations 1996 (FLR), which set criteria for the use of certain nutrition claims and made nutrition labelling compulsory when a nutrition claim is made. (Certain provisions in the NHCR will overtake provisions in FLR).

In addition, the Consumer Protection from Unfair Trading Practices 2008, prohibit unfair trading practices and identify misleading and aggressive practices as forms of unfair practice.

Broadcast Advertising Regulatory Framework

In practice, nutrition and health claims made on foods that are included in broadcast advertisements carried by Ofcom-licensed radio and TV broadcasters continue to be regulated by the ASA under the BCAP Radio Advertising Standards Code and the BCAP TV Advertising Standards Code (the BCAP Codes).

Of relevance to this consultation, the BCAP Codes presently include: rules that prevent misleading practices in general and misleading practices specific to the advertising of food; rules that are intended to support the protection of public health, particularly children's health, and a general requirement that advertisements must comply with the law and broadcasters must make that a condition of acceptance. The present BCAP Codes are generally consistent with the NHCR but, to the extent that any rules are inconsistent, the provisions of the NHCR take precedence. To that end, the present BCAP Codes state:

On 1 July 2007, a new and important regulation governing nutrition and health claims for foods came into force. The regulation is complex and mandatory. BCAP encourages broadcasters to take advice on the effect of the regulation and to consult the Food Standards Agency's Guidance to Compliance with Regulation (EC) 1924/2006 on Nutrition and Health Claims on Foods, which is available at www.food.gov.uk.

Enforcement

Ofcom-licensed television and radio broadcasters are responsible for ensuring that the advertisements they carry comply with the BCAP Codes. If it considers that a BCAP Code has been breached, the ASA can require the broadcaster not to repeat the advertisement in its present form. On those rare occasions that a broadcaster continues to broadcast an advertisement that the ASA has found in breach of a BCAP Code, the ASA can refer the broadcaster to Ofcom, which can impose statutory sanctions on the broadcaster. Ofcom can fine broadcasters and, in extreme cases, revoke the broadcaster's licence. For more information on the ASA's complaint handling procedure, go to www.asa.org.uk and for Ofcom's outline procedures for statutory sanctions go to www.ofcom.org.uk.

Section 4

Policy Background and Proposed Amendments to the BCAP Codes

General Policy Objectives

The BCAP Codes require that advertisements must comply with the law and broadcasters must make that a condition of acceptance. In addition, broadcasters must comply with the rules in the relevant BCAP Code, which can promote compliance with the law by reflecting legal requirements that are especially relevant to advertising. Broadcasters should feel confident that the BCAP Codes do not endorse practices that are illegal or otherwise undermine the law.

The present BCAP Codes are generally consistent with the NHCR but, to the extent that any rules are inconsistent, the provisions of the NHCR take precedence.

BCAP intends this consultation as an interim measure to help identify and accurately correct inconsistencies between the present BCAP Codes and the NHCR. BCAP proposes the minimum number of changes necessary to ensure that the present Codes do not allow practices that are explicitly prohibited by the NHCR and do not unduly restrict the use of nutrition or health claims that are permitted by the NHCR.

Separately, BCAP will soon consult on its general review of the BCAP Radio Advertising Standards Code and the BCAP TV Advertising Standards Code; “The BCAP Codes Review”. The BCAP Codes review will take into account decisions reached in this consultation and it is likely to include proposals for new rules that will help broadcasters to comply with the general and specific provisions of the NHCR.

In proposing to make the minimum number of changes necessary to ensure consistency with the NHCR, BCAP acknowledges that the updated Codes will not explicitly reflect some of the general or specific provisions of the Regulation that are relevant to broadcast advertisements. BCAP therefore encourages broadcasters to take advice on the effect of the regulation and to consult the Food Standards Agency’s Guidance to Compliance with Regulation (EC) 1924/2006 on Nutrition and Health Claims on Foods, which is available at www.food.gov.uk. Broadcasters are reminded that advertisements that they carry must comply with the law and that that must be a condition of acceptance.

BCAP's proposed approach has the benefit of ensuring that the present Codes are updated to ensure consistency with the NHCR and that minimum disruption is caused to stakeholders.

Non-broadcast advertisements

Non-broadcast advertisements are regulated by the ASA under the British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code).

The Committee of Advertising Practice (CAP), the self-regulatory body that created, revises and enforces the CAP Code, has amended its Code to ensure consistency with the NHCR. CAP is not, however, consulting beyond its members on those proposed amendments². CAP will take into account any changes that BCAP makes as a result of this consultation in its forthcoming comprehensive review of the CAP Code.

² BCAP is obliged to consult under the terms of the contracting-out agreement with Ofcom. Consultation is a time-consuming process, however, which means that the implementation of amendments to the BCAP Code will be necessarily delayed. CAP is not legally obliged to consult and has decided to publish its amendments as soon as possible.

Proposed amendments to the Codes prompted by Regulation (EC) 1924/2006 on Nutrition Claims and Health Claims made on Foods (the NHCR)

(i) Claims on Foods that refer to the Rate or Amount of Weight Loss

NHCR

Article 12 (b) of NHCR states:

“The following health claims shall not be allowed:

(b) claims which make reference to the rate or amount of weight loss”

A health claim is defined as “any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health “.

The present BCAP TV Code and Radio Code

Section 3:13 “Slimming Products, Treatments and Establishments”, rule 3:13 (d) of the present BCAP Radio Code states:

Promises or predictions of specific weight loss are not acceptable for any slimming aid. Where specific amounts of weight are claimed to have been lost by individuals the period over which the loss was achieved must be stated. The amount of weight lost and the period over which it was lost should be compatible with generally accepted good medical and dietary practice and not unrepresentative of the capabilities of the product or service offered.

Section 8.4 “Slimming Regimes and Weight Control Products”, rule 8.4.3 of the present BCAP TV Code states:

Advertisements must not promise or predict specific weight loss for products or services in this category. Advertisements which refer to specific amounts of weight that have been lost by individuals must also state the period over which that loss was achieved. The rate and amount of weight loss must be compatible with accepted good medical and dietary practice and must be representative of the capabilities of the product or service.

Rationale for proposed changes

The present BCAP radio rule 3:13 (d) and the present BCAP TV rule 8.4.3 apply to rate or amount of weight loss claims made on a wide range of slimming and

weight control products and services including, for example, exercise apparatus, slimming regimes and foods. BCAP considers the rules could presently undermine the NHCR by setting out the criteria for acceptable rate or weight loss claims, because the NHCR prohibits rate or amount of weight loss claims on foods. BCAP proposes to make explicit the NHCR prohibition on claims made on foods that refer to the rate or amount of weight loss.

Proposed changes

BCAP Radio rule 3:13(d)

Promises or predictions of specific weight loss are not acceptable for any slimming aid. Where specific amounts of weight are claimed to have been lost by individuals the period over which the loss was achieved must be stated. The amount of weight lost and the period over which it was lost should be compatible with generally accepted good medical and dietary practice and not unrepresentative of the capabilities of the product or service offered. **Food product claims that refer to a rate or amount of weight loss are not permitted.**

BCAP TV rule 8.4.3

Advertisements must not promise or predict specific weight loss for products or services in this category. Advertisements which refer to specific amounts of weight that have been lost by individuals must also state the period over which that loss was achieved. The rate and amount of weight loss must be compatible with accepted good medical and dietary practice and must be representative of the capabilities of the product or service. **Food product claims that refer to a rate or amount of weight loss are not permitted.**

Questions

Q1: Do you agree that it is necessary for BCAP to reflect Article 12(b) of the NHCR into BCAP Radio rule 3:13(d) and BCAP TV rule 8.4.3? If not, please explain your reasoning clearly.

Q2: Do you agree that BCAP has correctly reflected the requirements of Article 12(b) into BCAP Radio rule 3:13(d) and BCAP TV rule 8.4.3? If not, please explain your reasoning clearly.

(ii) Nutrition Claims and Health Claims for Food in Radio Advertisements Targeted Directly at Pre-school or Primary School Children

NHCR

Article 22 of the NHCR states:

“Without prejudice to the Treaty, in particular Articles 28 and 30 thereof, Member States may not restrict or forbid trade in or advertising of foods which comply with this Regulation by the application of non-harmonised national provisions governing claims made on certain foods in general.”

The Present BCAP Radio Code

Section 3:12 “Food and Beverages”, rule 12.1 “Diet and Lifestyle”, of the present BCAP Radio Code states:

... No nutrition or health claim may be used in food or soft drink product advertisements targeted directly at pre-school or primary school children; that prohibition does not apply to advertisements for fresh fruit or fresh vegetables.

Rationale for proposed changes

Article 30 of the EC Treaty (which is expressly applicable under Article 22 of the Regulation) allows Member States to maintain non-harmonised national provisions, including those governing nutrition or health claims made on foods, if those provisions are justified on grounds of the protection of health and life of humans.

The NHCR introduces for the first time several provisions that ensure children are protected against false or otherwise misleading nutrition or health claims made on foods. For example,

- Under Article 5(2), the use of nutrition or health claims shall only be permitted if the average consumer can be expected to understand the beneficial effects as expressed in the claim.
- Under Article 14, food advertisers that want to make food-related health claims specifically targeted at children or food-related claims referring to children’s development or health are required to satisfy the Commission that their claims comply with the criteria set out in the NHCR, for example that they are substantiated by scientific evidence. Food advertisers must give the Commission a proposal for the wording of the health claim for

which authorisation is sought including, if relevant, specific conditions for use. (BCAP understands a transitional period is in place to provide time for claims that refer to children's development or health that are in use to come into line with the requirements of the Regulation. See <http://www.food.gov.uk> for more information.)

BCAP has weighed up, on the one hand, the protection afforded by the rule (preventing pre-school and primary school children from potentially being misleadingly persuaded in their preferences for foods) and, on the other hand, the right of radio food advertisers to make nutrition or health claims that are compatible with the NHCR, which includes provisions that relate directly to the protection of children. On balance, BCAP considers the new protection afforded by the NHCR means it is no longer necessary to maintain the blanket prohibition on nutrition or health claims used in food or soft drink product advertisements targeted directly at pre-school or primary school children.

Proposed change

BCAP Radio Rule 3:12.1

~~...No nutrition or health claim may be used in food or soft drink product advertisements targeted directly at pre-school or primary school children; that prohibition does not apply to advertisements for fresh fruit or fresh vegetables.~~

Question

Q3: Do you agree that, in the light of NHCR provisions that ensure children are protected against false or otherwise misleading nutrition or health claims made on foods, it is not proportionate to maintain the part of BCAP Radio Rule 3:12.1 that imposes a blanket ban on the use of those claims in radio food advertisements targeted directly at pre-school or primary school children? If not, please explain your reasoning clearly.

(iii) Examples of nutrition claims and health claims

NHCR

Article 2(2)4 and Article 2(2)5 of the NHCR define, respectively, a nutrition claim and a health claim:

4. 'nutrition claim' means any claim which states, suggests or implies that a food has particular beneficial nutritional properties due to:

(a) the energy (calorific value) it

(i) provides,

(ii) provides at a reduced or increased rate, or

(iii) does not provide; and/or

(b) the nutrients or other substances it

(i) contains,

(ii) contains in reduced or increased proportions or

(iii) does not contain;

5. 'health claim' means any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health.

The present BCAP TV Code

Section 8.3 "Food and Dietary Supplements", rule 8.3.1(a) of the present BCAP TV Code states:

"Nutrition claims (e.g. "full of the goodness of vitamin C") or health claims (e.g. "aids a healthy digestion") must be supported by sound scientific evidence... Ambiguous wording that could be understood as a nutritional claim must be avoided. For example, "goodness" should not be used as a synonym for "wholesomeness"..."

Rationale for proposed changes

BCAP considers the present BCAP TV Code includes wrong examples of a nutrition claim.

Proposed changes

Nutrition claims (e.g. "**high in** ~~full of the goodness of~~ vitamin C") or health claims (e.g. "aids a healthy digestion") must be supported by sound

scientific evidence... Ambiguous wording that could be understood as a nutritional **health** claim must be avoided. For example, “goodness” should not be used as a synonym for “wholesomeness”....

Question

Q4: Do you agree that BCAP has correctly amended the examples of a nutrition claim and a health claim in BCAP TV rule 8.3.1(a)? If not, please explain your reasoning clearly.

(iv) Vitamins, Minerals and Dietary Supplements

NHCR

Article 3(d) of the NHCR states:

Without prejudice to Directives 2000/13/EC and 84/450/EEC, the use of nutrition and health claims shall not:

state, suggest or imply that a balanced and varied diet cannot provide appropriate quantities of nutrients in general. Derogations in the case of nutrients for which sufficient quantities cannot be provided by a balanced and varied diet, including the conditions for their application, may be adopted in accordance with the procedure referred to in Article 24(2), taking into account the special conditions present in Member States;

Article 14

1. Notwithstanding Article 2(1)(b) of Directive 2000/13/EC, reduction of disease risk claims and claims referring to children's development and health may be made where they have been authorised in accordance with the procedure laid down in Articles 15, 16, 17 and 19 of this Regulation for inclusion in a Community list of such permitted claims together with all the necessary conditions of the use of these claims.
2. In addition to the general requirements laid down in this Regulation and the specific requirements of paragraph 1, for reduction of disease risk claims the labelling or, if no such labelling exists, the presentation or advertising shall also bear a statement indicating that the disease to which the claim is referring has multiple risk factors and that altering one of these risk factors may or may not have a beneficial effect.

The present BCAP TV and Radio Codes

Section 3:12 "Food and Beverages", rule 12:2 "Dietary Supplements" (a) and (b) of the present BCAP Radio Code states:

12.2 Dietary Supplements

(a) Advertisements must not state or imply that dietary supplements, including vitamins or minerals, are necessary to avoid dietary deficiency or can enhance normal good health;

(b) Advertisements for dietary supplements must establish clearly those groups of people likely to benefit from the advertised supplement. Groups

that might benefit include: people on a restricted dietary regimen; those eating unsupplemented, low food-energy diets; women who are planning to become pregnant or are pregnant or lactating; growing children and some people over 50.

Section 8.3 “Food and Dietary Supplements”, rule 8.3.5 of the present BCAP TV Code states:

8.3.5 Dietary supplements

(a) Advertisements must not suggest that it is necessary or therapeutic for the average person to augment their diet or that dietary supplements can enhance normal good physical or mental condition

(b) Advertisements must clearly establish those groups of people likely to benefit from a particular form of supplement

Note to 8.3.5(b):

Only certain groups are likely to benefit from particular vitamin or mineral supplements. They might include people on a restricted dietary regimen, those eating unsupplemented, low-energy diets, women of child-bearing age (particularly if they are planning to have a baby, are pregnant or lactating), growing children and some individuals over 50.

Rationale for proposed changes

The Community Register of health claims is intended to be published before January 2010; it will list health claims that are authorised by the Commission. The Community Register will probably include disease-risk-reduction claims: health claims that state, suggest or imply that the consumption of a food category, a food or one of its constituents significantly reduces a risk factor in the development of human disease. If it does, the BCAP TV and radio rules that require advertisements to specify the group of people benefitting from vitamins and minerals would, in BCAP’s consideration, unduly restrict the use of authorised disease-risk-reduction claims that could benefit consumers in general, as opposed to groups in particular. BCAP proposes to amend the present BCAP Radio rule 3:12.2 (a) and (b) and the present BCAP TV rule 8.3.5 (a) and (b) to accommodate the likely prospect of authorised disease-risk-reduction claims.

BCAP understands that the Commission would attach stringent conditions of use in allowing disease-risk-reduction claims.

Proposed changes

Words shaded in grey reflect proposed changes in line with that rationale. Unshaded words reflect requirements in the present BCAP Radio rule 3:12.2 (a) and (b) and present BCAP TV rule 8.3.5 (a) and (b)

Section 3:12 “Food and Beverages”, rule 12:2 “Dietary Supplements” (a) and (b) of the present BCAP Radio Code states:

12.2 Dietary Supplements

a) Advertisements must not state or imply that dietary supplements, including vitamins or minerals, are necessary to avoid dietary deficiency or, unless the claim is authorised by the European Commission, that dietary supplements can enhance normal good health. Claims about a higher vitamin or mineral intake for a specific function are permitted if authorised by the European Commission.

b) Advertisements may offer vitamin and mineral supplements to certain groups as a safeguard to help maintain good health. If the claim made for a vitamin or mineral supplement is relevant only to a group that is at risk of inadequate intake, the advertisement must state clearly the group likely to benefit from the supplement. Groups that might benefit include: people on a restricted dietary regimen; those eating unsupplemented, low food-energy diets; women who are planning to become pregnant or are pregnant or lactating; growing children and some people over 50.

Section 8.3 “Food and Dietary Supplements”, rule 8.3.5 of the present BCAP TV Code states:

8.3.5 Dietary supplements

(a) Advertisements must not suggest that it is necessary for the average person to augment the diet or, unless the claim is authorised by the European Commission, that dietary supplements can enhance normal good physical or mental condition. Claims about a higher vitamin or mineral intake for a specific function are permitted if authorised by the European Commission.

(b) Advertisements may offer vitamin and mineral supplements to certain groups as a safeguard to help maintain good health. If the claim made for a vitamin or mineral supplement is relevant only to a group that is at risk of inadequate intake, the advertisement must state clearly the group likely to benefit from a particular form of supplement.

Note to 8.3.5(b):

Only certain groups are likely to benefit from particular vitamin or mineral supplements. They might include people on a restricted

dietary regimen, those eating, low-energy diets, women of child-bearing age (particularly if they are planning to have a baby, are pregnant or lactating), growing children and some individuals over 50.

Questions

Q5: Do you agree that present BCAP Radio rule 3:12.2 (a) and (b) and present BCAP TV rule 8.3.5 (a) and (b) could unfairly restrict disease risk reduction claims that are compatible with the NHCR? If not, please explain your reasoning clearly

Q6: Do you agree that BCAP has correctly amended BCAP Radio rule 3:12.2 (a) and (b) and present BCAP TV rule 8.3.5 (a) and (b) to take into account the disease-risk-reduction claims that are compatible with the NHCR? If not, please explain your reasoning clearly

(v) Nutrition claims in alcohol advertisements

NHCR

Article 4(3) of the NHCR states:

Beverages containing more than 1.2% by volume of alcohol shall not bear health claims.

As far as nutrition claims are concerned, only nutrition claims referring to low alcohol levels, or the reduction or absence of alcohol or energy in beverages containing more than 1.2% by volume of alcohol, shall be permitted.

The present BCAP TV and Radio Codes

Section 11.8 “Alcoholic Drinks”, rule 11.8.2 (f) of the present BCAP TV Code states:

Advertisements for alcoholic drinks may contain factual statements about product contents, including comparisons, but must not make any other type of health, fitness or weight control claim.

Section 3:11 “Alcoholic Drinks”, rule 11.3.1 “Health Diet and Nutritional Claims” of the present BCAP Radio Code states:

Advertisements for alcoholic drinks may contain factual statements about product contents, including comparisons, but must not make any other type of health, fitness or weight control claim.

Rationale for proposed changes

The present BCAP radio rule 3:11.3.1 and the present BCAP TV rule 11.8.2 outline types of claims that are prohibited in TV and radio alcohol advertisements. BCAP considers the rules could undermine the NHCR because the types of prohibited claims could be interpreted as exhaustive. The NHCR prohibits most nutrition claims made on alcohol but permits nutrition claims referring to low alcohol levels, or the reduction or absence of alcohol or energy in beverages containing more than 1.2% by volume of alcohol (article 4 (3)). BCAP proposes to make explicit in the rules that only three types of nutrition claims are permissible in TV and radio alcohol advertisements.

BCAP considers implying a link between ‘fitness’ or ‘weight control’ and a product, would constitute a health claim in line with the definition in article 2(5):

'health claim' means any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health.

Additionally, the present wording of the rules incorrectly suggest a factual statement and a comparison are types of health claims. The revised text clarifies that position.

Proposed changes

BCAP TV rule 11.8.2 (f)

Advertisements for alcoholic drinks may contain factual statements about product contents, including comparisons, but must not make any other type of health **claims, which include** fitness or weight control claims. **The only permitted nutrition claims are “low alcohol”, “reduced alcohol” and “reduced energy”.**

BCAP Radio rule 3:11.3.1

Advertisements for alcoholic drinks may contain factual statements about product contents, including comparisons, but must not make any other type of health **claims, which include** fitness or weight control claims. **The only permitted nutrition claims are “low alcohol”, “reduced alcohol” and “reduced energy”.**

Q7. Do you agree that BCAP has correctly reflected the requirements of Article 4(3) into BCAP Radio rule 3:11.3.1 and BCAP TV rule 11.8.2 (f)? If not, please explain your reasoning clearly.

(vi) Identifying other necessary changes to ensure the BCAP Codes do not conflict with the NHCR

As stated in the Executive Summary and Section 4 “Policy Background and Proposed Amendments to the BCAP Codes”, BCAP considers the present BCAP Radio Advertising Standards Code and the BCAP TV Advertising Standards Code are generally consistent with the NHCR.

BCAP intends this consultation as an interim measure to help identify and accurately correct inconsistencies between the present BCAP Codes and the NHCR. BCAP proposes the minimum number of changes necessary to ensure that the present Codes do not allow practices that are explicitly prohibited by the

NHCR and do not unduly restrict the use of nutrition or health claims that are permitted by the NHCR.

Separately, BCAP will soon consult on its general review of the BCAP Radio Code and the BCAP TV Code, "The BCAP Codes Review". The BCAP Codes Review will take into account decisions reached in this consultation and it is likely to include proposals for new rules that will help broadcasters to comply with the general and specific provisions of the NHCR.

In proposing to make now the minimum number of changes necessary to ensure consistency with the NHCR, BCAP acknowledges that the updated Codes will not explicitly reflect some of the general or specific provisions of the Regulation that are relevant to broadcast advertisements. BCAP therefore encourages broadcasters to take advice on the effect of the regulation and to consult the Food Standards Agency's Guidance to Compliance with Regulation (EC) 1924/2006 on Nutrition and Health Claims on Foods, which is available at www.food.gov.uk. Broadcasters are reminded that advertisements that they carry must comply with the law and that that must be a condition of acceptance. BCAP's proposed approach has the benefit of ensuring that the present Codes are updated to ensure consistency with the NHCR and that minimum disruption is caused to stakeholders.

Q8: Do you agree that, subject to the changes proposed in this consultation, the present Codes do not allow practices that are explicitly prohibited by the NHCR and do not unduly restrict the use of nutrition or health claims that are permitted by the NHCR? Please explain your reasoning clearly

Annex 1

Consultation questions

BCAP welcomes all responses to this consultation. To help us to evaluate your response more efficiently, BCAP prefers respondents to address the questions below. (See 'Responding to this consultation'.)

Q1: Do you agree that it is necessary for BCAP to reflect Article 12(b) of the NHCR into BCAP Radio rule 3:13(d) and BCAP TV rule 8.4.3? If not, please explain your reasoning clearly.

Q2: Do you agree that BCAP has correctly reflected the requirements of Article 12(b) into BCAP Radio rule 3:13(d) and BCAP TV rule 8.4.3? If not, please explain your reasoning clearly.

Q3: Do you agree that, in the light of NHCR provisions that ensure children are protected against false or otherwise misleading nutrition or health claims made on foods, it is not proportionate to maintain the part of BCAP Radio Rule 3:12.1 that imposes a blanket ban on the use those claims in radio food advertisements targeted directly at pre-school or primary school children? If not, please explain your reasoning clearly.

Q4: Do you agree that BCAP has correctly amended the examples of a nutrition claim and a health claim in BCAP TV rule 8.3.1(a)? If not, please explain your reasoning clearly.

Q5: Do you agree that present BCAP Radio rule 3:12.2 (a) and (b) and present BCAP TV rule 8.3.5 (a) and (b) could unfairly restrict disease-risk-reduction claims that are compatible with the NHCR? If not, please explain your reasoning clearly.

Q6: Do you agree that BCAP has correctly amended BCAP Radio rule 3:12.2 (a) and (b) and present BCAP TV rule 8.3.5 (a) and (b) to take into account the disease-risk-reduction claims that are compatible with the NHCR? If not, please explain your reasoning clearly.

Q7: Do you agree that BCAP has correctly reflected the requirements of Article 4(3) into BCAP Radio rule 3:11.3.1 and BCAP TV rule 11.8.2 (f)? If not, please explain your reasoning clearly.

Q8: Do you agree that, subject to the changes proposed in this consultation, the present Codes do not allow practices that are explicitly prohibited by the NHCR and do not unduly restrict the use of nutrition or health claims that are permitted by the NHCR? Please explain your reasoning clearly.

Please:

- be as specific as possible in your responses;
- if you disagree with a BCAP proposal, explain why and
- suggest an alternative proposal.

Annex 2

Responding to this consultation

How to respond

BCAP invites written comments on the proposals contained in this document, including supporting evidence, by **5.00pm on 16 February 2009**.

When responding, please state whether you are doing so as an individual or are representing an organisation. Also, please make clear what your individual interest is or who your organisation represents. It will be helpful if you explain fully and clearly why you hold your opinion.

We strongly prefer to receive responses as e-mail attachments, in Microsoft Word format, because that helps us to process the responses. Please send your response to consult@cap.org.uk.

If you are unable to reply by e-mail, you may submit your response by post or fax (+44 (0)20 7404 3404), marked with the title of the consultation, to:

Marlene Dias
Broadcast Committee of Advertising Practice
Mid City Place
71 High Holborn
London WC1V 6QT

Accessibility

We want our consultation process to be accessible to everyone. If you have particular accessibility needs please contact us and we shall be happy to help.

Telephone: 020 7492 2200

E-mail: consult@cap.org.uk

Fax: 020 7404 3404

Textphone: 020 7242 8159

Note that we do not need a hard copy and an electronic version. Also note that BCAP will not routinely acknowledge receipt of responses. BCAP has sent written notification of this consultation to the organisations and individuals listed on pages 29 to 31. We welcome suggestions of others you think should be informed of this consultation.

More information

If you have any questions about this consultation or need advice on the form of response, please telephone BCAP's Code Policy team on +44 (0)20 7492 2200.

Confidentiality

BCAP considers that everyone who is interested in the consultation should see the consultation responses. We shall publish all non-confidential responses on

our website, www.cap.org.uk, usually within three months of the end of the consultation.

All comments will be treated as non-confidential unless you state that all or a specified part of your response is confidential and should not be disclosed. If you reply by e-mail or fax, unless you include a specific statement to the contrary in your response, the presumption of non-confidentiality will override any confidentiality disclaimer generated by your organisation's IT system or included as a general statement on your fax cover sheet.

If part of a response is confidential, please put that in a separate annex so that non-confidential parts can be published with your identity. Confidential responses will be included in any statistical summary of the number of comments received.

Annex 3

List of Consultees Invited to Respond

To obtain a variety of opinions, BCAP has invited these individuals and organisations to respond to this consultation:

ADVERTISING ASSOCIATION
ALLIANCE FOR NATURAL HEALTH
BRITISH ASSOCIATION FOR APPLIED NUTRITION AND NUTRITIONAL THERAPY
BRITISH BEER & PUB ASSOCIATION
BRITISH DENTAL ASSOCIATION
BRITISH DIABETIC ASSOCIATION (THE)
BRITISH DIETETIC ASSOCIATION (THE)
BRITISH ESSENTIAL OIL ASSOCIATION LIMITED (THE)
BRITISH FRUIT JUICE ASSOCIATION
BRITISH HEART FOUNDATION
BRITISH HOSPITALITY ASSOCIATION
BRITISH MEDICAL ASSOCIATION
BRITISH POTATO COUNCIL
BRITISH RETAIL CONSORTIUM
BRITISH SHOPS & STORES ASSOCIATION LTD
BSKYB
CINEMA ADVERTISING ASSOCIATION
CAMPAIGN FOR REAL ALE LTD
CEREAL PARTNERS UK
CHANNEL 4
CHANNEL 5
CLEARCAST
CONSENSUS ACTION ON SALT & HEALTH
CONSUMER FOCUS
CONSUMERS FOR HEALTH CHOICE LIMITED
COSMETIC, TOILETRY AND PERFUMERY ASSOCIATION LIMITED (THE)
DAIRY UK LIMITED
DEPARTMENT FOR CULTURE MEDIA & SPORT (THE)
DEPARTMENT FOR ENVIRONMENT AND RURAL AFFAIRS
DEPARTMENT OF HEALTH
DIRECT MARKETIGN ASSOCIATION
DISTANCE SELLING ASSOCIATION
ELECTRONIC RETAILERS ASSOCIATION UK
EUROPEAN FOOD LAW ASSOCIATION
FINDUS LIMITED
FOOD AND DRINK FEDERATION (THE)
FOOD STANDARDS AGENCY
GENERAL MEDICAL COUNCIL
GMTV
H.J.HEINZ COMPANY LTD

HEALTH FOOD MANUFACTURERS ASSOCIATION
INTERNET ADVERTISING BUREAU
INFANT AND DIETETIC FOODS ASSOCIATION LIMITED
INSTITUTE OF ALCOHOL STUDIES
INTERNATIONAL FOOD POLICY RESEARCH INSTITUTE
INSTITUTE OF PRACTITIONERS IN ADVERTISING
INCORPORATED SOCIETY OF BRITISH ADVERTISERS
INSTITUTE OF SALES PROMOTION
ITV
LEATHERHEAD FOOD INTERNATIONAL
MEDICINES AND HEALTHCARE PRODUCTS REGULATORY AGENCY
MAIL ORDER TRADERS ASSOCIATION
MEDICAL RESEARCH COUNCIL - Human Nutrition Research
NATIONAL CONSUMER RIGHTS PROTECTION BOARD
NEWSPAPER SOCIETY
NEWSPAPER ASSOCIATION
OUTDOOR ADVERTISING ASSOCIATION
ORGANIC FOOD COMPANY
ORKLA FOODS
PROPRIETARY ASSOCIATION OF GREAT BRITAIN
PRET A MANGER
RADIO ADVERTISING CLEARANCE CENTRE
ROYAL AGRICULTURAL SOCIETY OF ENGLAND
ROYAL COLLEGE OF GENERAL PRACTITIONERS
ROYAL COLLEGE OF PAEDIATRIC & CHILD HEALTH
ROYAL MAIL
RUBICON
THE SATELLITE AND CABLE BROADCASTERS GROUP
SCIENTIFIC ADVISORY COMMITTEE ON NUTRITION
SCOTTISH DAILY NEWSPAPER SOCIETY
SEA FISH INDUSTRY AUTHORITY
SEVEN SEAS LTD
SMA NUTRITION
SNACK, NUT AND CRISP MANUFACTURERS ASSOCIATION (SNACMA)
SOMERFIELD STORES LIMITED
STILTON CHEESE MAKERS ASSOCIATION (THE)
TELETEXT
THE BISCUIT, CAKE, CHOCOLATE AND CONFECTIONARY ASSOCIATION
THE BRITISH COFFEE ASSOCIATION
THE BRITISH COMPLEMENTARY MEDICINE ASSOCIATION
THE BRITISH INSTITUTE OF INNKEEPING
THE BRITISH NUTRITION FOUNDATION
THE BRITISH SOFT DRINKS ASSOCIATION LTD
THE COMMUNITY PRACTITIONERS' AND HEALTH VISITORS' ASSOCIATION
The COMPLEMENTARY AND NATURAL HEALTHCARE COUNCIL
THE CONSUMER COUNCIL FOR NORTHERN IRELAND
THE DAIRY COUNCIL
THE DRINKAWARE TRUST
THE EUROPEAN FEDERATION OF ASSOCIATIONS OF HEALTH PRODUCT
MANUFACTURERS

THE FACULTY OF PUBLIC HEALTH
THE GIN AND VODKA ASSOCIATION OF GREAT BRITAIN
THE NUTRITION SOCIETY
THE ORGANIC FOOD FEDERATION
THE PROPRIETARY ASSOCIATION OF GREAT BRITAIN
THE ROYAL SOCIETY FOR PUBLIC HEALTH
THE SNPA
THORTONS PLC
TWINNINGS
VIRGIN MEDIA
VOICE OF THE LISTENER AND VIEWER
WHICH?
YAKULT UK LIMITED

Please note that BCAP welcomes responses from all other interested parties. Copies of this document are available in alternative formats upon request. Please contact us at:

Code Policy Team
Broadcast Committee of Advertising Practice
Mid City Place
71 High Holborn
London WC1V 6QT
T +44 (0)20 7492 2200
F +44 (0)20 7404 3404
E consult@cap.org.uk

The Broadcast Committee of Advertising Practice (BCAP) is the industry body responsible for writing and revising the UK's TV and radio advertising Codes to ensure that all broadcast advertisements are legal, decent, honest and truthful.

To find out more about the work of the Committee or to subscribe to our quarterly advertising industry e-mail newsletter, visit our website at:

www.cap.org.uk